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(2) Supreme Court, U.S.
FILED

07-66 JUL 16 2007

No. OFFICE OF THE CLERK

In The

Supreme Court of the United States

STEVEN MONTES,
Petitioner,

v.

PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

On Petition For Writ Of Certiorari To The Supreme Court of California

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

States may adopt wiretap statutes so long as they comply with federal statutory and constitutional limits on electronic surveillance. 18 U.S.C. § 2516(2).

I.

Does application of California's "informant privilege" (Cal. Evid. Code § 1041) to affidavits filed in support of wiretap applications and pre-wiretap investigative materials violate a criminal defendant's right under the federal wiretap statute to challenge the "necessity" for electronic surveillance (18 U.S.C. §§ 2515, 2518(3) (c))?

II.

Does application of California's "informant privilege" (Cal. Evid. Code § 1041) to affidavits filed in support of wiretap applications and pre-wiretap investigative materials comport with the constitutional principle of fundamental fairness that was at issue in Roviaro v. United States, 353 U.S. 53, 77 S.Ct. 623, 1 L.Ed.2d 639 (1957)?

III.

Does extension to wiretap affidavits of the *in camera* review procedure approved for search warrant affidavits by the California Supreme Court in People v. Hobbs, 7 Cal.4th 948, 30 Cal.Rptr.2d 651 (1994), exceed limits placed by this Court on the scope of the informant privilege?

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In The

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STEVEN MONTES,
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v.

PEOPLE OF THE
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PETITION FOR WRIT OF CERTIORARI

Petitioner Steven Montes respectfully petitions this Court for a writ of certiorari to review the order of the Superior Court of the State of California for the County of Los Angeles denying petitioner's motion for discovery.

OPINIONS AND ORDERS BELOW

The Superior Court of California for the County of Los Angeles denied petitioner's motion for discovery on November 16, 2006. The Court of Appeal of the State of California summarily denied petitioner's petition for writ of mandate on February 7, 2007. On April 18, 2007, the Supreme Court of California summarily denied petitioner's petition for review of the Court of Appeal's order.

JURISDICTION

This Court has jurisdiction to review the judgment of the California Supreme Court under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED[1]

I. U.S. Const. Amend. IV

II. U.S. Const. Amend. V

III. U.S. Const. Art. VI, cl.2

IV. Fed. R. Evid. 501

V. 18 U.S.C. §§ 2515, 2516(2), 2518(3)

VI. Cal. Evid. Code §§ 1040-1042

VII. Cal. Penal Code §§ 629.50, 629.62, 629.72

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[1] Pursuant to this Court's Rule 14.1. (f), the constitutional provisions and statutes involved in this case are set out in the Appendix ("App.") at 15-29.

STATEMENT OF THE CASE

I.

Procedural History

On May 2, 2006, the People of the State of California filed a Felony Complaint against petitioner Steven Montes ("Mr. Montes") and eight other defendants. The complaint alleges criminal conspiracies in violation of California Penal Code section 182 and violation of various provisions of the California Health and Safety Code. (App. at 39-59) The criminal investigation was led by the Bureau of Narcotic Enforcement ("BNE") of the California Department of Justice. (App. at 60-74)

The BNE investigation utilized 7 court-authorized interceptions of electronic communications ("wiretaps") on 14 cellular telephones during the period November 2005 through March 2006. (App. at 120-26)

At the outset of the litigation, the People initially refused to provide Mr. Montes with any discovery documenting the nature and scope of the BNE investigation prior to the implementation of the wiretap. (App. at 120-26) Subsequently, the People provided Mr. Montes with eight (8) BNE Reports of Investigation (the "pre-wiretap reports"). (App. at 127-59) However, the People's redactions to the pre-wiretap reports concealed the entire investigation.

(App. at 127-59) While the People provided Mr. Montes with the affidavits filed in support of the wiretap applications, the affidavits were also substantially redacted. (App. at 75-119)

In defense of these redactions, the People invoked the privileges set forth at California Evidence Code sections 1040 through 1042 and the California Supreme Court decision in People v. Hobbs, 7 Cal.4th 948, 30 Cal. Rptr. 2d 651 (1994) to justify the redactions and withholding of information concerning the nature of the BNE investigation prior to the first wiretap application. (App. at 120-126)

On September 1, 2006, Mr. Montes moved to compel the People to produce unredacted affidavits filed in support of applications for orders authorizing the interception of wire communications ("wiretap applications") and unredacted reports of investigative activities undertaken prior to the filing of wiretap applications (the "motion to compel").

In the motion to compel, Mr. Montes argued that the People's redactions to these wiretap-related materials violated his rights under both the Fourth Amendment the United States Constitution and his rights under the Due Process Clause of the Fifth Amendment. (App. at 32-33). Mr. Montes also argued that redaction of these materials violated his right to litigate the "necessity" for the wiretap under California Penal Code sections 629.52(d) and 629.72,

and sections 2518(3)(c) of Title 18 of the United States Code. (App. at 3-14) On November 16, 2006, the Superior Court denied Mr. Montes' motion for discovery. (App. at 3-14)[2]

II.

Reasons Why the Petition Should Be Granted

This Court should grant review because the decision of the Supreme Court of California to leave undisturbed the trial court's order denying the motion to compel relates to an important question of federal law that has not been, but should be, settled by this Court. (Rule 10(c)).

Specifically, this Court has never addressed the extent to which the common law "informant privilege" recognized in Scher v. United States, 305 U.S. 251, 59 S.Ct. 174, 83 L.Ed. 151 (1938), Roviaro v. United States, 353 U.S. 53, 77 S.Ct. 623, 1 L.Ed.2d 739 (1957) and McCray v. Illinois, 386 U.S. 300, 87 S.Ct 1056, 18 L.Ed.2d 62 (1967) properly limits a criminal

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[2] Mr. Montes subsequently filed a petition for writ of mandate in the Court of Appeal of the State of California. The petition was denied on February 7, 2007. (App. at 2). Mr. Montes then filed a petition for review in Supreme Court of California. The California Supreme Court denied the petition for review on April 18, 2007. (App. at 1). The argument that the Superior Court's order offended Mr. Montes' rights under the federal wiretap statute and the United States Constitution was reiterated in each petition. (App. at 33-38)

defendant's right to litigate the "necessity" for a wiretap issued under either federal or state law. Nor has this Court ever addressed the extent to which invocation by a State of its own informant privilege offends principles of fundamental fairness.

The decision of the Superior Court denying Mr. Montes' motion to compel disclosure of the scope of the BNE's investigation prior to the first wiretap places these federal statutory and constitutional questions squarely at issue.

ARGUMENT

I.

The People's Evidence was Obtained Through Wiretaps Authorized by State Law

The investigation led by Special Agent Salaiz ("SA Salaiz") utilized 7 court-authorized wiretaps covering 14 cellular telephones. The first wiretap was authorized on November 3, 2005. Subsequent wiretaps were authorized on November 21, 2005, December 12, 2005, December 15, 2005, January 13, 2006, February 17, 2006 and March 14, 2006. (App. at 120-126).

In the 14-page Statement of Probable Cause filed in support of the arrest warrants issued in this case, BNE Special Agent Wilde ("SA Wilde") summarizes the investigation. Importantly, SA Wilde's probable cause statement does not rely upon

any investigation, evidence or information developed prior implementation of the first wiretap on November 3, 2005. (App. at 60-74).

On November 4, 2005, one day after the first wiretap was implemented, law enforcement seized $600,049 from a vehicle driven by defendant Joel Nunez. According to the People's list of "Overt Acts" in support of the conspiracy and SA Wilde's affidavit, this seizure was the direct result of information obtained from a wiretap intercept of conversations between Mr. Montes and Joel Nunez. (App. at 50-52, 61-63). This seizure corresponds to the offense charged in Count 3. (App. at 41-42).

On November 28, 2005, one week after the second wiretap was authorized, law enforcement seized $195,670 from a vehicle driven by defendant Antonio Anguiano. This seizure was a direct result of information obtained during the wiretap interception of conversations between Mr. Montes and Mr. Anguiano, and is charged in Count 4. (App. at 42, 50-52, 63-67).

On January 20, 2006, one week after the fourth wiretap was extended, law enforcement executed a search warrant at a residence located in Sylmar. The information developed in support of the search warrant was obtained from the court-authorized wiretaps. (App. at 66-70). During the search of that residence, law enforcement seized approximately 650

pounds of marijuana, as alleged in counts 5 and 6. (App. at 43).

On February 25, 2006, law enforcement seized 175 kilograms of cocaine from a tractor trailer truck driven by defendant Samuel Viveros Murillo. All of the information obtained by law enforcement that led to this seizure was developed through wiretap intercepts of telephone conversations between Mr. Montes and others. (App. at 52-57, 69-72). Counts 7, 8 and 14 in the Felony Complaint correspond to this seizure. (App. at 44-45, 48).

On February 26 and March 1, 2006, in the State of Illinois, agents seized 178 kilograms of cocaine from vehicles that had allegedly been driven by defendants Augustine Alvarez and Omar Cruz. These seizures were the direct result of wiretap surveillance of conversations between Mr. Montes and others. (App. at 56-59). These seizures are alleged in Counts 9 through 12. A simultaneous search of a residence in Illinois led to the discovery of $100,000. (Count 13) (App. at 45-48).

II.

The Federal Wiretap Statute Controls Wiretap Laws Adopted by the States

Section 2516(2) of Title 18 of the United States Code regulates electronic surveillance by state officers.

A judge may approve a wiretap "in conformity

with...this chapter and with the applicable State statute." 18 U.S.C. § 2516(2) In other words, state wiretap statutes are valid "only if the provisions of those laws are at least as restrictive as the federal requirements for a wiretap set out in Title III of the Omnibus Crime Control and Safe Streets Act of 1948 ("Title III")". People v. Jackson, 129 Cal. App. 4th 129, 146, 28 Cal. Rptr.3d (2005).

This Court has stated that the government may resort to electronic surveillance, when necessary, only when assurances have been made that citizens are not subject to unreasonable and unnecessary intrusions into their privacy. United States v. Giordano, 416 U.S. 505, 526-27, 94 S. Ct. 1820, 40 L. Ed. 2d 341 (1974). In making the initial determination to authorize a wiretap, the court must balance the interest of law enforcement and the restraint necessary to protect the public in the context of wiretap interception. United States v. Kalustian, 529 F.2d 585, 588 (9th Cir. 1976).[3]

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[3] 18 U.S.C. § 2518, subdivision (1) provides:
(1) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication under this chapter shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state applicant's authority to make such application. Each application shall include the following information:

(a) the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

(b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be omitted, (ii) except as provided in subsection (11), a particular description of the nature and location of the facilities from which or the place where the communications is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) a statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probably cause to believe that additional communications of the same type will occur thereafter;

(e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire, oral, or electronic communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application; and

(f) where the application is for the extension of an order, a statement setting forth the results

The Act's requirement that a wiretap is only to be authorized when it is necessary to accomplish the legitimate goals of a criminal investigation is squarely at issue in this case because the People's redactions to both the affidavits filed in support of the wiretap applications and Reports of Investigation that document the pre-wiretap investigation effectively preclude Mr. Montes from understanding and challenging the government's decision to seek a wiretap and the court's approval.

The government bears the burden of establishing that it has satisfied the "necessity" requirement set out at 18 U.S.C. § 2518(3)(c). (App. at 18) "This necessity requirement means that the affidavit must set forth a factual background that shows that ordinary investigative procedures, employed in good faith, would likely be ineffective in the particular case." United States v. Brone, 792 F.2d 1504, 1506 (9th Cir. 1986).

While electronic surveillance need not be used only as a last resort, wiretaps are not to be "routinely employed as the initial step in a criminal investigation." United States v. Giordano, 416 U.S. 505, 515, 94 S.Ct. 1820, 40 L. Ed. 2d 341 (1974); United States v. Bailey, 607 F.2d 237, 241 (9th Cir.

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thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

1979) cert. den., 445 U.S. 934 (1980). The "necessity requirement" exists to limit the use of wiretaps because of their highly intrusive nature and to assure that wiretapping is not resorted to in situations where "traditional investigative techniques would suffice to expose the crime." United States v. Kahn, 415 U.S. 143, 153 n.12, 94 S.Ct. 977, 3 L. Ed. 2d 225 (1974). If the application does not contain an adequate "statement" concerning the use of other investigative procedures, a warrant based upon such an application is invalid. United States v. Donovan 429 U.S. 413, 435, 97 S.Ct. 658, 50 L. Ed. 2d 652 (1977).

As stated by the Ninth Circuit in United States v. Carneiro, 861 F.2d 1171, 1176 (9th Cir. 1989):

> A district court must reject a wiretap application if law enforcement officers have not first attempted, without success, traditional investigative methods that 'easily suggest themselves and are potentially productive and not unduly dangerous.' ... The purpose of the necessity requirement is to ensure that wiretapping is not resorted to in situations where traditional investigative techniques would suffice to expose the crime.

The Government must overcome the statutory presumption against granting a wiretap application. United States v. Ippolito, 774 F.2d 1482, 1486 (9th Cir. 1985). Absent specific circumstances that render

normal investigative techniques particularly ineffective, the application must be denied. Id. at 1486. Allegations that the crime being investigated is inherently difficult to solve will not suffice. United States v. Martinez, 588 F.2d 1227, 1231 (9th Cir. 1978). "Bald conclusory statements without factual support are not enough." United States v. Commito, 918 F.2d 95, 97 (9th Cir. 1990); United States v. Abascal, 564 F.2d 821, 826 (9th Cir. 1977), cert. den. sub. nom., 435 U.S. 942 (1978). Although the necessity requirement "is tested in a practical and common-sense fashion," to determine the reasonableness of a specific alternative technique, a "particularized showing" is necessary. United States v. Echavarria-Olarte, 904 F.2d 1391, 1396 (9th Cir. 1990). The reason for requiring specificity is to prevent the Government from making general allegations about classes of cases and thereby sidestepping the necessity requirement in the particular investigation for which the wiretap is sought. As the Ninth Circuit observed in Ippolito:

> [W]e must be careful not to permit the Government merely to characterize a case as a 'drug conspiracy' . . . that is therefore inherently difficult to investigate. The affidavit must show with specificity why in this particular investigation ordinary means of investigation will fail.

United States v. Ippolito, 774 F.2d at 1486 (original emphasis) (quoting United States v. Robinson, 698 F.2d 448, 453, (D.C. Cir. 1983).)

In United States v. Kalustian, the Ninth Circuit held that mere conclusory statements that traditional procedures have failed in the past and are likely to fail in the future were insufficient compliance with the statutory requirement, requiring suppression of the evidence. The Kalustian panel stated:

> Obviously, electronic surveillance can facilitate criminal investigation. ...But Title III does not allow wiretapping to replace such other techniques unless they 'have been tried and failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous' ...The Government failed in this case to satisfy 18 U.S.C. §2518(a) (c). Its application did not adequately show why traditional investigative techniques were not sufficient in this particular case. A judge reviewing a wiretap application is handicapped without such a showing. Title III and the individual's right to privacy, which it seeks to preserve, demand no less than a full and complete

statement of underlying

circumstances.

The Kalustian panel concluded that the affidavit did not enlighten the magistrate as to why the conspiracy in that particular case presented any investigative problems which were distinguishable in nature or degree from any other conspiracy. United States v. Kalustian, 529 F.2d 585, 589-90 (9th Cir. 1975).

III.

The Informant Privilege Under this Court's Precedents

This Court has long recognized an "informant privilege" allowing the government to withhold information regarding the identity of an informant in certain circumstances. Scher v. United States, 305 U.S. 251, 254, 59 S.Ct. 174, 83 L.Ed. 151 (1938) ("public policy forbids disclosure of an informer's identity..."). The government is generally privileged to withhold the identity of an informant defendant, unless nondisclosure violates a defendant's right to "fundamental fairness."

The leading Supreme Court case of Roviaro v. United States, 353 U.S. 53, S.Ct. 623 (1957), provided that the "informer's privilege" is in reality the government's privilege to withhold the identity of the informant. Id. at 59. The policy behind the privilege

recognizes the obligation of citizens to inform law enforcement about their knowledge of criminal conduct, and by remaining anonymous, encourage them to perform such obligation. Nevertheless, the informant privilege is not without limitations. "Where disclosure of an informer's identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or essential to a fair determination of a cause, the privilege must give way." Id. at 60-61.

In Roviaro, the government refused to disclose the identity of the informant on the grounds that it was privileged information. This Court found that under the circumstances, the privilege was not applicable because the disclosure of the informant's identity was material to the defense because the informant had been present when the defendant allegedly committed the crimes charged against him. Id. at 63.

This Court did not establish a fixed rule with respect to when the informant privilege is properly invoked. Instead, the Court stated that the issue is one that is to be determined by balancing in each instance the public interest in protecting the free flow of information against a defendant's right to prepare his case. Id. at 62. This Court's decision to require disclosure of the informant's identity in Roviaro was based on "fundamental requirements of fairness." Id. at 60.

This Court has consistently connoted "fundamental fairness" with a constitutional right to due process. "As applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice." Lisenba v. California, 314 U.S. 219, 236, 62 S.Ct. 280, 290, 86 L.Ed. 166 (1941). As Justice Rehnquist noted, "[One] of the purposes of the Due Process Clause of the Fourteenth Amendment is to insure...'essential demands of fairness.'" Ham v. South Carolina, 409 U.S. 524, 93 S. Ct. 848, 35 L.Ed. 2d 46, 50 (1973). "A fair trial in a fair tribunal is a basic requirement of due process." In re Murchison, 349 U.S. 133. 136. 75 S. Ct. 623, 625, 99 L.Ed. 942 (1955).

This Court's decision in McCray v. Illinois, 386 U.S. 300, 87 S. Ct. 1056, 18 L. Ed. 2d 62 (1967), addressed whether the identity of a confidential informant must be disclosed to a defendant who seeks to challenge the finding of probable that permitted an arrest and search. The State asserted the informant privilege. Id. at 308. This Court concluded that the failure to identify the informant at a preliminary hearing to determine probable cause for arrest did not violate the defendant's rights under the confrontation clause. Id. at 313.

This Court has never addressed the extent to which a federal or state court may limit a defendant's

access to information that established the necessity for a wiretap by relying on an informant privilege.

IV.

California's Comprehensive Wiretap Statute

A. Introduction

California has a comprehensive statutory scheme regulating interception by law enforcement of wire, electronic pager or electronic cellular telephone communications. Cal. Penal Code §§ 629.50 et seq.

Careful analysis of the overall framework of the wiretap statutes demonstrates that surreptitious surveillance of private communications bears no resemblance to run-of-the-mill search warrants. In Berger v. New York, this Court noted the particularly invasive character of wiretapping.

> The need for particularity and evidence of reliability in the showing required when judicial authorization of a search is sought is especially great in the case of eavesdropping. By its very nature eavesdropping involves an intrusion on privacy that is broad in scope. [T]he indiscriminate use of such devices in law enforcement raises grave constitutional questions under the Fourth and Fifth Amendments, and imposes 'heavier responsibility on this

Court in its supervision of the fairness of procedures.

Berger v. New York, 388 U.S. 41, 56, 87 S. Ct. 1873, 18 L. Ed. 2d 1040 (1967) (internal citations omitted).

Applications for an order authorizing wiretaps may only be made upon the personal oath of the Attorney General or District Attorney, their chief deputies or persons designated to act in their absence. Applications must be reviewed by the presiding judge of the superior court or other judges specifically designated. Cal. Penal Code § 629.50(a). Search warrant applications are not subject to such restrictions on who may seek them and who may approve them.[4]

B. Wiretaps May be Used Only to Investigate Certain Categories of Crime

The wiretap statute only permits interception where the criminal activity under investigation is one of the statutorily enumerated narcotics offenses involving more than an established minimum quantity of substances, murder, solicitation to murder or felonies involving destructive devices, participation in a criminal street gang, or weapons of mass

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[4] In People v. Jackson, the California Supreme Court held that the "good faith" exception to the warrant requirement established by this Court in United States v. Leon, 468 U.S. 897, 82 L.Ed.2d 677, 104 S.Ct. 3405 (1984), is not applicable to defective wiretap orders.

destruction, including attempts or conspiracies to commit any of the above-listed offenses. Cal. Penal Code § 629.52(a) ("section 629.52(a)"). There is no limitation in California law on the criminal activity that may be investigated through execution of a traditional search warrant.

C. Four Separate Findings are Required Before an Order May Issued

Upon application, a court may issue an order authorizing interception only after making all of the following findings:

1) that there is probable cause to believe that an individual is engaged in one of the specified criminal activities listed in section 629.52(a);

2) that there is probable cause to believe that particular communications concerning the specified illegal activities will be obtained through the interception;

3) that there is probable cause to believe that electronic devices to be intercepted are being used or are about to be used "in connection with the commission of the offense" or are leased to, listed in the name of or "commonly used" by the person whose communications are to be intercepted, and

4) that normal investigative procedures have been tried and have failed or reasonably appear either to be unlikely to succeed if tried or to be too dangerous. Cal. Penal Code § 629.52(b)-(d) (emphasis

added). This fourth requirement is commonly referred to as the "necessity" requirement. People v. Zepeda, 87 Cal. App. 4th 1183, 1195, 105 Cal. Rptr.2d 187, 194 (2001).

Because the court may only issue an order authorizing interception where all four of these requirements are met, the content of applications must also comply with stringent statutory requirements.

D. No Defendant May be Tried or Convicted without First Receiving Notice of the Existence of Evidence Obtained from a Wiretap

A defendant in a criminal proceeding has an absolute right to notice that he or she was "identified as the result of an interception." This notice must be provided prior to entry of a plea of guilty or nolo contendere and at least 10 days prior to any trial or hearing other than arraignment. Cal. Penal Code § 629.70(a). This right to notice also provides that "the prosecution shall provide to the defendant a copy of all recorded interceptions from which evidence against the defendant was derived, including a copy of the court order, accompanying applications, and monitoring logs. Cal. Penal Code § 620.70(b) (emphasis added). "A court may issue an order limiting disclosures pursuant to subdivisions (a) and

(b) upon a showing of good cause." Cal. Penal Code § 629.70(d).

Evidence obtained from a wiretap may not be used at trial unless the recorded interception, a transcript, the order, the accompanying applications and monitoring logs have been provided to the defendant not less than 10 days prior to trial. If the transcript cannot be provided 10 days prior to trial, evidence from a wiretap may not be admitted at trial unless the court finds that the defendant will not be prejudiced by the delay in receiving the transcript. There is no exception to the 10-day rule with respect to the recording itself, the application, order or monitoring logs. Cal. Penal Code § 629.70(c).

E. The Wiretap Statute Provides a Defendant with an Explicit Right to Move to Suppress the Contents of Intercepted Communications or Evidence Derived from an Interception

California Penal Code section 629.72 provides that [a]ny person in any trial, hearing, or proceeding, may move to suppress some or all of the contents of any intercepted wire, electronic pager, or electronic cellular telephone communications, or evidence derived there from, only on the basis that the contents or evidence were obtained in violation of the Fourth Amendment of the United States Constitution or of this chapter. Cal. Penal Code § 629.72.

F. The Necessity Requirement

The necessity requirement is central to the validity of a wiretap. While technical defects in a wiretap application or order or in the implementation of the intercept do not rise to the level of a Fourth Amendment violation, the failure to establish the "necessity" prong of the 4 prerequisites to issuance of a wiretap is a well-established ground upon which evidence may be suppressed and upon which a wiretap can be attacked under section 629.72.

California's Sixth Appellate District's opinion in People v. Zepeda, issued in 2001, concluded that at that time "no published California case has yet to address the "necessity" requirement of section 629.52, subdivision (d)" and looked, therefore, to federal cases for direction. People v. Zepeda, 87 Cal. App. 4th 1183, 1204, 105 Cal. Rptr.2d 187, 199 (2001). In Zepeda, the Court dissected the "necessity" requirement set out at section 629.52(d) into three separate parts, any one of which may establish the need for a wiretap:

The Government may establish the need for a wiretap by showing *either* (i) that normal investigative procedures have been tried and failed, *or* (ii) that normal investigative procedures, though not yet tried, 'reasonably appear' to be either 'unlikely to succeed if tried' or 'too dangerous' In reality, this gives the government three alternative ways to establish the need for a wiretap.

People v. Zepeda, 87 Cal. App. 4th at 1204.

In sum, an affidavit must show (1) why in this particular investigation (2) normal investigative techniques (3) employing normal resources (4) in good faith (5) have failed to make the case (6) in a reasonable period of time. Since necessity is a keystone of Congressional regulation of electronic eavesdropping, courts closely examine challenges for noncompliance and reject applications that misstate or overstate the difficulties involved. See C. Fishman, Wiretapping and Eavesdropping, §89 (1978).

V.

The "Official Information" and "Confidential Informant" Privileges in California Evidence Code Sections 104-1042

A. Introduction

In this matter, the State and the Court invoked the "official information" and "confidential informant" privileges in California Evidence Code sections 1040 and -1041 ("sections 1040 and 1041") to justify withholding from Mr. Montes all information concerning the nature and scope of the investigation of the investigation of Mr. Montes prior to the implementation of the court-authorized wiretaps. (App. at 3-19) According to the State, BNE SA Salaiz prepared only 7 investigative reports prior to the

implementation of the wiretap and there are no other reports related to the investigation. (App. at 123-126).

The entire content of five of those investigative reports has been redacted by the People. (App. at 127-148). The redactions are so extensive that with the exception of the date on which the report was prepared and the name of the author of the report, absolutely no information about the nature of the investigation can be gleaned from them.

After the Superior Court received *in camera* testimony on two occasions and reviewed the People's redactions *in camera,* the Superior Court determined that none of the redactions of investigative reports one through five exceeded the scope authorized by sections 1040-1041 and ruled that the privileges at sections 1040-1041 apply to information sought by a defendant who seeks to challenge the necessity of a court-authorized wiretap. (App. at 13).

B. California Evidence Code Section 1040

California Evidence Code section 1040 ("section 1040") establishes a qualified privilege for "official information", which is defined as " information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made." Cal. Evid. Code § 1040(a). (App. at 19-20)

C. California Evidence Code Section 1041

California Evidence Code Section 1041 ("section 1041") also provides for a qualified privilege for the identity of an "informer". (App. at 1041)

While the qualified privilege established in section 1041 refers specifically to the identity of an informer, the Supreme Court of California has stated that there is a "well-established corollary rule that if disclosure of the contents of [the informant's] statement would tend to disclose the identity of the informer, the communication itself should come within the privilege." People v. Hobbs, 7 Cal. 4th 948, 962, 873 P.2d 1246, 30 Cal. Rptr.2d 651 (1994).

The balancing tests set forth in sections 1040 and 1041 are identical: in order to withhold confidential information from a defendant, the "necessity" for preserving confidentiality must outweigh the interests of justice.

VI.

The California Supreme Court Decision in People v. Hobbs is Limited to Search Warrant Challenges

In People v. Hobbs, 7 Cal. 4th 948, 962, 873 P.2d 1246, 30 Cal. Rptr.2d 651 (1994), the issue was whether a defendant challenging a search warrant is entitled to the disclosure of an informant's identity or information regarding the informant's

communications. Id. at 954. The California Supreme Court held that pursuant to the government's privilege to protect the identities of confidential informants, information that might form the basis for challenging the validity of a search warrant affidavit, which if disclosed, would reveal the identity of the informant, may be redacted. Id. at 971-72. Also, portions of a search warrant affidavit relating facts or information which, if disclosed, will reveal a confidential informant's identity may be sealed. Id. at 973. The materials are made available for *in camera* review by the trial court in connection with a motion to challenge the warrant's validity or discover whether the informant is a material witness to the defendant's guilt or innocence. Id. at 974.

The ruling in Hobbs established a rule to be followed in search warrants challenges but did not address challenges to wiretaps and no subsequent California Supreme Court decision or federal court decision has addressed that question. While the Superior Court's decision in this case was based upon the rule established in Hobbs, no court has ever applied the rationale of Hobbs to a court-authorized wiretap.

VII.

The Superior Court's Application of a Qualified Privilege to Wiretap Materials Precludes Mr. Montes From Meaningfully Challenging the Necessity of the Wiretap

This Court has never addressed the scope of 18 U.S.C. § 2516(2). Nor has this Court addressed whether the application of a qualified privilege to information in pre-wiretap investigative reports and wiretap affidavits violates the federal wiretap statute or due process.

Wiretaps are generally disfavored, implicate important Constitutional rights, and are controlled by a strict statutory framework. Without access to the materials denied Mr. Montes, he is unable to meaningfully challenge the necessity for and propriety of the wiretaps utilized in this investigation.

Mr. Montes has both a federal a statutory right and a constitutional due process right to litigate the necessity of the wiretap, and "necessity" is central to validity of the wiretap.

In the present case, the California Superior Court denied Mr. Montes' motion to compel disclosure of investigative reports and affidavits. The California Superior Court determined that Mr. Montes' right to challenge the necessity for the court-authorized wiretaps is limited by California's informant privileges.

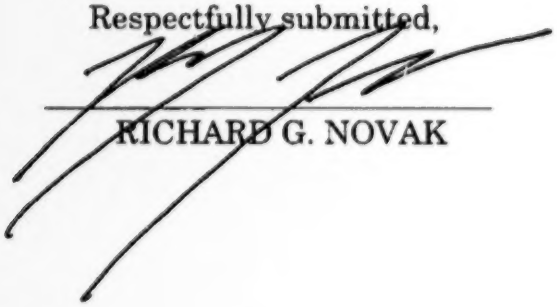
Under federal law, there is a presumption against the use of wiretaps. In this case, application of the informant privilege offends both the wiretap statute and fundamental fairness because it deprives Mr. Montes of any meaningful right to exercise his rights under the wiretap statues.

CONCLUSION

Mr. Montes respectfully requests that this Court grant his petition for certiorari.

DATED: July 16, 2007

Respectfully submitted,



RICHARD G. NOVAK

Supreme Court, U.S.
FILED

(1)

No. 07-66 JUL 16 2007

OFFICE OF THE CLERK

In The

Supreme Court of the United States

STEVEN MONTES,
Petitioner,

v.

PEOPLE OF THE
STATE OF CALIFORNIA,
Respondent.

On Petition For Writ Of Certiorari To
The Supreme Court of California

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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COURT OF APPEAL

SECOND APPELLATE DISTRICT

DIVISION EIGHT-NO. B196108

S150399

IN THE SUPREME COURT OF CALIFORNIA

En Banc

STEVEN MONTES,

Petitioner,

v.

LOS ANGELES COUNTY SUPERIOR COURT,

Respondent;

THE PEOPLE, Real Party in Interest.

SUPREME COURT
FILED
APRIL 18, 2007
Frederick K. Ohlrich Clerk
Deputy

The petition for review is denied.

George, C.J., was absent and did not participate.

Signature of J. Moreno

Acting Chief Justice

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ORDER

Case No. B196108

(Super. Ct. No. BA302020)

(Bob S. Bowers, Judge)

STEVEN MONTES,

Petitioner,

v.

COURT OF APPEAL-
SECOND DISTRICT
FILED
FEB 07 2007
Joseph A. Lane Clerk
E. Amos Deputy Clerk

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES,

Respondent;

THE PEOPLE OF THE STATE OF CALIFORNIA,

Real Party in Interst.

THE COURT*:

We have read and considered the petition for writ of mandate filed on January 16, 2007.

The petition is denied.

Signature	*Signature*	*Signature*
*COOPER, P.J	BOLAND, J.	FLIER, J.

TRANSCRIPT OF PROCEEDINGS IN LOS ANGELES SUPERIOR COURT, INCLUDING VERBAL ORDER OF COURT DENYING MOTION FOR DISCOVERY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

Department 105

Honorable Bob S. Bowers, Judge

People of the State of California,

Plaintiff,

vs.

Steven Montes, Enjobul King, Agustin Alvarez, Omar Cruz, Rufino Acevedo, Derwin Webster,

Defendants.

No. BA302020

Reporter's Transcript of Proceedings

September 27, 2006

Sylvia A. Alston

CSR NO. 6236

Official Court Reporter

The Court:...You may as well get some chairs I guess then. Can I tell you tentatively where I am at this point?

Mr. Novak: Please.

The Court: And maybe you can anticipate, could have anticipated this or maybe not. I have looked at the moving papers in this matter regarding the motion for discovery. Basically the defense seeks a review of or finds the contents of the affidavit in support of the wiretap number 05-198 and a six-day report, number 2, and the investigation reports number 1 through 5 and number 23.

The way I view it is the defense's position primarily is that they wish to argue these issues in open court. And the People obviously have said then that they believe this is privileged, and their intent to revoke a privilege in this matter for governmental whatever, and informant, and the possibility that the information could lead to the discovery of the identity of an informant.

What I propose to do it to order the people to supply to the Court completely unredacted copies of the affidavit in support, the six-day report number 2, and the investigative reports 1 through 5 and 23. And I will read them and compare them with the redacted copies that were included in the defense motion and make a determination at that point.

If the People are dissatisfied with that, then I will allow time for people to run writs, if they wish to do so, or the People, Depending on what the Court may or may not do, may elect not to waive their

privilege and go forward in that regard. So that's how I basically view it at this point.

I'm going to listen to what the attorneys have to say.

Mr. Novak: Thank you, your honor.

For the court reporter's benefit, Richard Novak on behalf of Mr. Montes...

...We are not here today seeking the identity of the informant. This is not what we have ever asked the People to produce, and we have not asked the Court for that information.

And that is the scenario presented in People v. Hobbs, which is the defendant wants information about the informant because the defendant believes that the informant is either reliable or doesn't have the foundation for information which led to a probable cause determination and the issuance of a search warrant.

The Court: I understand your argument, the problem I see is to approach it the way you suggest, would possibly, in the process itself, reveal the names possibly of people that the privilege may actually be applicable to; and, therefore, basically the same thing would be accomplished.

Mr. Novak: I understand that, but I think it's important to state clearly, if our papers don't, that we are not here asking for the name of any particular informant. And we don't have any information that

there is an informant because the redactions are so broad.

But we also take the position which I think the court should see from out papers, is abased on statutory and Constitutional analysis, that in the case of a wiretap affidavit, the privilege has to give way.

And what Hobbs does, is it balances the privilege against a search warrant challenge. And we disagree fundamentally with the People's suggestion that a wiretap affidavit, or I should say a wiretap and a search warrant, are equivalent.

And I think that we have given the Court a number of ways of analyzing that, and Federal law, which says that they are not equivalent, that there is something uniquely invasive about a wiretap. And that's why the statutes require the People to establish so much probable cause. We are talking about necessity.

So even though I, if I may agree with the Court, that it's appropriate to look and see whether or not the redactions are appropriate within the context of the privilege, it's still our position that when you litigate the wiretap, and especially the issue of necessity, that it may be in the end that whatever is still privileged has to give way.

The Court: What standard are you suggesting for assessing?

Mr. Novak: I'm suggesting the standard which is set forth in the statute, as it's been interpreted. Frankly, there is very little, as I can call it, California Case Law on what necessity means.

The Court: I agree with you.

Mr. Novak: That's why we gave the Court what we think are certainly persuasive statement from the Ninth Circuit. If the Court feels we haven't given the Court enough authority, then we will give you more.

The Court: I'm not suggesting that...

I think, at this point, we are primarily speaking to, Pardon me for not being clearer, the scope. I'm looking, at this point, to the scope.

The bottom line is to see if what was redacted is in fact related to what it is the People claim to want to keep privileged. And that's what I'm looking for at this point.

Mr. Novak: I think it is an appropriate two-step process. And we are happy to await the Court's Order that certain portions be redacted or order that nothing be redacted because the Court has made an analysis of the privilege.

I just want to make it clear, and I think Mr. Carney understands this also, that we are not conceding that the privilege trumps the defendant's rights under the wiretap statute under the Fourth

Amendment. That is what I think is a second level of analysis.

The Court: You made that clear...

Mr. Carney: ...the one thing I want, because this affects the timing, to be clear on, under the procedure established in People v. Hobbs, which is the procedure I think the Court is suggesting for review of whether the privilege applies, the Court is sort of reserving, as I understand it, for another day the arguments over whether the privilege ultimately applies to the wiretap.

The Court: That's true...

(Proceedings Adjourned)

November 3, 2006

The Court: The Court calls the matter of the People of the State of California vs. Mesers, Montes, Webster, King, Alvarez, Cruz and Acevedo...

It's the Court's understanding the Court's function, at this point, was to review any number of affidavits and reports to determine whether or not the redactions contained in some of those documents were absolutely necessary to protect the identity of the informant.

Since that time, the Court has held a hearing involving a witness in this matter that was sealed for, clarification, relative to Hobbs. I have gone over these documents.

It's now quarter to 11:00. What I had anticipated we would do this morning is I would go on chambers with the District Attorney and the witness in this matter, and go over the areas that I thought could not be redacted, for lack of a better phrase, and see what the District Attorney had to say again, on the record. And then I would obviously make rulings within the hearing itself, and then come out and tell the test of the defendants and defense counsel what the Court had decided in that regard. That's the way I had thought about approaching it.

Mr. Carney.

Mr. Carney: I apologize, your honor, if I misunderstood the way we were going to proceed because I don't have the witness available today.

What I had anticipated happening today – and I was a little unclear how we were proceeding.

It seems to me there was a preliminary issue raised in the defense counsel's motion, which is the applicability of that procedure to a wiretap in the first place.

Now obviously it's the People's position it is a straightforward application of the privilege, whether it is a search warrant or a wiretap affidavit.

And I anticipated we possibly were going to argue that and have a ruling on that, and then proceed to the second phase, which is the one the court mentioned.

I can have the agent available on relatively short notice, but he is based out of this county.

The Court: Again, I just want to be clear. I don't want the Court to be perceived as being a road block in this matter.

I thought clearly, with Mr. Novak as basically lead counsel in this matter, that we had agreed we would first do a global for the redacted purposes. And then thereafter, we would go on to the issues you were talking about. Either way, that was my understanding...

Mr. Carney: It frankly may be that the People and the law enforcement agency claiming the privilege have no objections to the things the Court is going to order us to disclose. I think a further in-camera is appropriate...

The Court: I apologize to the attorneys. If he can be here this afternoon, I'm not going to hold you all further at all—basically I'm in trial in another matter. I'm taking Friday off to handle other matters.

I guess I will ask you to come back next Friday, if the affiant can be here this afternoon. If he can't be here this afternoon, I will have to figure out what date during the course of next week I guess to try to handle this. I don't think it will have a great deal of time to do this.

For the Court to have a definitive ruling with respect to what I would allow at this point, I think I

want to do that next week, considering where we are right now, So that's basically all I can say...

(Proceedings Adjourned)

November 16, 2006

The Court: The Court calls the matter of the People of the State of California vs. Mesers, Montes, Webster, King, Alvarez, Cruz and Acevedo, BA302020

All of the defendants are present in Court...

Mr. Novak.

Mr. Novak: Thank You, your honor.

When we were last in court, your honor continued today's hearing because the court wanted to take further testimony in-camera.

We understand, from Mr. Carney, that that happened. And I think it's correct to day this morning Mr. Carney gave counsel for each defendant a certain stack of documents which he represents are pages from various documents which were at issue, which the court determined were, at least in part, not properly redacted under the privilege. In other words, that privilege did not apply.

The Court: That's correct.

Mr. Novak: Other than that, we don't really know where the Court intends to go. I think at the initial hearing on the motion, an in the papers we filed, we made it clear on behalf of Mr. Montes that we don't believe that any of the privileges, the statutory

privileges which the people rely on, survive the balancing test which is set forth in those privileges, when what is redacted is portions of wiretap affidavits.

The privileges discuss search warrants. There is no reference to wiretaps. And I don't know whether the Court needs to hear further argument on that or whether the Court heard enough.

The second part of that, which I hope is not hypothetical, but if, by the way, this has been litigated so far, is that we ask the Court to rule on out request that when that it disclosed, that it orders the People to disclose all of the discovery unredacted and not follow the procedure ser fourth in People v. Hobbs, a California Supreme Court decision of 1994, when we file our wiretap affidavit, the motion challenging the wiretap affidavit and the evidence obtained from those wiretaps.

So I don't know whether it's appropriate for me to say anymore because I think we need to hear where the Court had come down on this issue.

Mr. Carney: Just for the record, if I could indicate, I have lodged with the Court a copy of the discovery that I provided to all counsel this morning so that the Court, one, would have a record of what was turned over; and two, could confirm what was turned over was in accordance with what the Court ordered. I just wanted to confirm the Court had that, and it's part of the Court's record.

The Court: Thank You.

Mr. Novak, I guess the only thing I can say, at this point, is that the Court will not order the People to turn over all the unredacted materials, and the Court, at this point, will follow Hobbs. That much I can say.

And that may pretty much take up your motion also.

Mr. Novak: I think that is a clear ruling on not only the very clear motion for discovery, but the Court is clearly saying, and if I'm mistaken, Please state so—

The Court: Sure.

Mr. Novak: -- That when we file our motion to suppress the evidence obtained from the wiretap, that we are going to have to do it subject to the redactions that we how have, and that the court will follow the procedure set fourth in People v. Hobbs.

The Court: I think that is an accurate statement. At this point, I think you may have said it directly because, we are in an uncharrtered area at this point.

And I do believe the state of the law, at this point, and my understanding is I think Hobbs serves as a good framework for what we area attempting to do here. That's the Court's understanding and ruling at this point...

That will be the Court's Order...

(Proceedings Adjourned.)

Reporter's Certificate

State of California

County of Los Angeles

SS

I, Sylvia A. Alston, official reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing pages 1 through 42 comprise a full, true and correct transcript of the proceedings held in the matter of the above-entitled cause on September 27, 2006, Octover 27, 2006, November 3, 2006, November 16, 2006.

Dated this 17th Day of December, 2006.

(Signature) Sylvia A. Alston, CSR 6236

Official Reporter

MATERIALS REQUIRED BY
RULES 14. 1.(i) (v) and 14. 1. (f)

I.

U.S. Const. Amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

II.

U.S. Const. Amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

III.

U.S. Const. Art. VI, Cl. 2

Supreme law

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

IV.

Fed. R. Evid. 501

Except as otherwise required by the Constitution of the United States or provided by Act of Congress or in rules prescribed by the Supreme Court pursuant to statutory authority, the privilege of a witness, person, government, State, or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience. However, in civil actions and proceedings, with respect to an element of a claim or defense as to which State law supplies the rule of decision, the privilege of a witness, person, government, State, or political subdivision thereof shall be determined in accordance with State law.

V.

18 U.S.C. § 2515

Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter.

VI.

18 U.S.C. § 2516(2)

(2) The principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral, or electronic communications, may apply to such judge for, and such judge may grant in conformity with section 2518 of this chapter and with the applicable State statute an order authorizing, or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs,

marihuana or other dangerous drugs, or other crime dangerous to life, limb, or property, and punishable by imprisonment for more than one year, designated in any applicable State statute authorizing such interception, or any conspiracy to commit any of the foregoing offenses.

VII.

18 U.S.C. § 2518(3)

Procedure for interception of wire, oral, or electronic communications

(3) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, oral, or electronic communications within the territorial jurisdiction of the court in which the judge is sitting (and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction), if the judge determines on the basis of the facts submitted by the applicant that--

(a) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 2516 of this chapter;

(b) there is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

(c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) except as provided in subsection (11), there is probable cause for belief that the facilities from which, or the place where, the

wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

VIII.

Cal. Evid. Code § 1040

Privilege for official information

(a) As used in this section, "official information" means information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made.

(b) A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing official information, if the privilege is claimed by a person authorized by the public entity to do so and:

(1) Disclosure is forbidden by an act of the Congress of the United States or a statute of this state; or

(2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding. In determining whether disclosure of the information is against the public interest,

the interest of the public entity as a party in the outcome of the proceeding may not be considered.

(c) Notwithstanding any other provision of law, the Employment Development Department shall disclose to law enforcement agencies, in accordance with the provisions of subdivision (k) of Section 1095 and subdivision (b) of Section 2714 of the Unemployment Insurance Code, information in its possession relating to any person if an arrest warrant has been issued for the person for commission of a felony.

IX.

Cal. Evid. Code § 1041

Privilege for identity of informer

(a) Except as provided in this section, a public entity has a privilege to refuse to disclose the identity of a person who has furnished information as provided in subdivision (b) purporting to disclose a violation of a law of the United States or of this state or of a public entity in this state, and to prevent another from disclosing such identity, if the privilege is claimed by a person authorized by the public entity to do so and:

(1) Disclosure is forbidden by an act of the Congress of the United States or a statute of this state; or

(2) Disclosure of the identity of the informer is against the public interest because there is a necessity for preserving the confidentiality of his identity that outweighs the

necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the identity of the informer be disclosed in the proceeding. In determining whether disclosure of the identity of the informer is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered.

(b) This section applies only if the information is furnished in confidence by the informer to:

(1) A law enforcement officer;

(2) A representative of an administrative agency charged with the administration or enforcement of the law alleged to be violated; or

(3) Any person for the purpose of transmittal to a person listed in paragraph (1) or (2).

(c) There is no privilege under this section to prevent the informer from disclosing his identity.

X.

Cal. Evid. Code § 1042

Adverse order or finding in certain cases

(a) Except where disclosure is forbidden by an act of the Congress of the United States, if a claim of privilege under this article by the state or a public entity in this state is sustained in a criminal proceeding, the presiding officer

shall make such order or finding of fact adverse to the public entity bringing the proceeding as is required by law upon any issue in the proceeding to which the privileged information is material.

(b) Notwithstanding subdivision (a), where a search is made pursuant to a warrant valid on its face, the public entity bringing a criminal proceeding is not required to reveal to the defendant official information or the identity of an informer in order to establish the legality of the search or the admissibility of any evidence obtained as a result of it.

(c) Notwithstanding subdivision (a), in any preliminary hearing, criminal trial, or other criminal proceeding, any otherwise admissible evidence of information communicated to a peace officer by a confidential informant, who is not a material witness to the guilt or innocence of the accused of the offense charged, is admissible on the issue of reasonable cause to make an arrest or search without requiring that the name or identity of the informant be disclosed if the judge or magistrate is satisfied, based upon evidence produced in open court, out of the presence of the jury, that such information was received from a reliable informant and in his discretion does not require such disclosure.

(d) When, in any such criminal proceeding, a party demands disclosure of the identity of the informant on the ground the informant is a material witness on the issue of guilt, the court shall conduct a hearing at which all parties may present evidence on the issue of disclosure. Such hearing shall be conducted outside the presence of the jury, if any. During

the hearing, if the privilege provided for in Section 1041 is claimed by a person authorized to do so or if a person who is authorized to claim such privilege refuses to answer any question on the ground that the answer would tend to disclose the identity of the informant, the prosecuting attorney may request that the court hold an in camera hearing. If such a request is made, the court shall hold such a hearing outside the presence of the defendant and his counsel. At the in camera hearing, the prosecution may offer evidence which would tend to disclose or which discloses the identity of the informant to aid the court in its determination whether there is a reasonable possibility that nondisclosure might deprive the defendant of a fair trial. A reporter shall be present at the in camera hearing. Any transcription of the proceedings at the in camera hearing, as well as any physical evidence presented at the hearing, shall be ordered sealed by the court, and only a court may have access to its contents. The court shall not order disclosure, nor strike the testimony of the witness who invokes the privilege, nor dismiss the criminal proceeding, if the party offering the witness refuses to disclose the identity of the informant, unless, based upon the evidence presented at the hearing held in the presence of the defendant and his counsel and the evidence presented at the in camera hearing, the court concludes that there is a reasonable possibility that nondisclosure might deprive the defendant of a fair trial.

XI.

Cal. Penal Code § 629.72

Motion to suppress

Any person in any trial, hearing, or proceeding, may move to suppress some or all of the contents of any intercepted wire, electronic pager, or electronic cellular telephone communications, or evidence derived therefrom, only on the basis that the contents or evidence were obtained in violation of the Fourth Amendment of the United States Constitution or of this chapter. The motion shall be made, determined, and be subject to review in accordance with the procedures set forth in Section 1538.5.

XII.

Cal. Penal Code § 629.50

Application for order authorizing interception; facsimile copies

(a) Each application for an order authorizing the interception of a wire, electronic pager, or electronic cellular telephone communication shall be made in writing upon the personal oath or affirmation of the Attorney General, Chief Deputy Attorney General, or Chief Assistant Attorney General, Criminal Law Division, or of a district attorney, or the person designated to act as district attorney in the district attorney's absence, to the presiding judge of the superior court or one other judge designated by the presiding judge. An ordered list of additional judges may be authorized by the presiding judge to sign an order authorizing

an interception. One of these judges may hear an application and sign an order only if that judge makes a determination that the presiding judge, the first designated judge, and those judges higher on the list are unavailable. Each application shall include all of the following information:

(1) The identity of the investigative or law enforcement officer making the application, and the officer authorizing the application.

(2) The identity of the law enforcement agency that is to execute the order.

(3) A statement attesting to a review of the application and the circumstances in support thereof by the chief executive officer, or his or her designee, of the law enforcement agency making the application. This statement shall name the chief executive officer or the designee who effected this review.

(4) A full and complete statement of the facts and circumstances relied upon by the applicant to justify his or her belief that an order should be issued, including (A) details as to the particular offense that has been, is being, or is about to be committed, (B) the fact that conventional investigative techniques had been tried and were unsuccessful, or why they reasonably appear to be unlikely to succeed or to be too dangerous, (C) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (D) a particular description of the type of communication sought to be intercepted, and (E) the identity, if known, of the person committing the offense and whose

communications are to be intercepted, or if that person's identity is not known, then the information relating to the person's identity that is known to the applicant.

(5) A statement of the period of time for which the interception is required to be maintained, and if the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of the facts establishing probable cause to believe that additional communications of the same type will occur thereafter.

(6) A full and complete statement of the facts concerning all previous applications known, to the individual authorizing and to the individual making the application, to have been made to any judge of a state or federal court for authorization to intercept wire, electronic pager, or electronic cellular telephone communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each of those applications. This requirement may be satisfied by making inquiry of the California Attorney General and the United States Department of Justice and reporting the results of these inquiries in the application.

(7) If the application is for the extension of an order, a statement setting forth the number of communications intercepted pursuant to the original order, and the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain results.

(8) An application for modification of an order may be made when there is probable cause to believe that the person or persons identified in the original order have commenced to use a facility or device that is not subject to the original order. Any modification under this subdivision shall only be valid for the period authorized under the order being modified. The application for modification shall meet all of the requirements in paragraphs (1) to (6), inclusive, and shall include a statement of the results thus far obtained from the interception, or a reasonable explanation for the failure to obtain results.

(b) The judge may require the applicant to furnish additional testimony or documentary evidence in support of an application for an order under this section.

(c) The judge shall accept a facsimile copy of the signature of any person required to give a personal oath or affirmation pursuant to subdivision (a) as an original signature to the application. The original signed document shall be sealed and kept with the application pursuant to the provisions of Section 629.66 and custody of the original signed document shall be in the same manner as the judge orders for the application.

XIII.

Cal. Penal Code § 629.52

Order authorizing interception; required findings; specified offenses

Upon application made under Section 629.50, the judge may enter an ex parte order, as

requested or modified, authorizing interception of wire, electronic pager, or electronic cellular telephone communications initially intercepted within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines, on the basis of the facts submitted by the applicant, all of the following:

(a) There is probable cause to believe that an individual is committing, has committed, or is about to commit, one of the following offenses:

(1) Importation, possession for sale, transportation, manufacture, or sale of controlled substances in violation of Section 11351, 11351.5, 11352, 11370.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code with respect to a substance containing heroin, cocaine, PCP, methamphetamine, or their precursors or analogs where the substance exceeds 10 gallons by liquid volume or three pounds of solid substance by weight.

(2) Murder, solicitation to commit murder, the commission of a felony involving a destructive device in violation of Section 12303, 12303.1, 12303. 2, 12303.3, 12303.6, 12308, 12309, 12310, or 12312, or a violation of Section 209.

(3) Any felony violation of Section 186.22.

(4) Any felony violation of Section 11418, relating to weapons of mass destruction, Section 11418.5, relating to threats to use weapons of mass destruction, or Section 11419, relating to restricted biological agents.

(5) An attempt or conspiracy to commit any of the above- mentioned crimes.

(b) There is probable cause to believe that particular communications concerning the illegal activities will be obtained through that interception, including, but not limited to, communications that may be utilized for locating or rescuing a kidnap victim.

(c) There is probable cause to believe that the facilities from which, or the place where, the wire, electronic pager, or electronic cellular telephone communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by the person whose communications are to be intercepted.

(d) Normal investigative procedures have been tried and have failed or reasonably appear either to be unlikely to succeed if tried or to be too dangerous.

MATERIALS REQUIRED BY RULES 14.1. (i)(v) AND 14.1. (g)(i)

I.

Excerpts from Petitioner's Motion for Discovery Filed in the Los Angeles Superior Which Establish that Petitioner Timely and Properly Raised Federal Questions Below

"THE PEOPLE'S REDACTIONS DEPRIVE MR. MONTES OF HIS FOURTH AMENDMENT AND STATUTORY RIGHT TO CHALLENGE THE WIRETAPS IN THIS INVESTIGATION

California Penal Code section 629.72 specifically provides that any person may move to suppress the contents of intercepted communications and evidence derived there from. It states:

"Any person in any trial, hearing, or proceeding, may move to suppress some or all of the contents of any intercepted wire, electronic pager, or electronic cellular telephone communications, or evidence derived there from, only on the basis that the contents or evidence were obtained in violation of the Fourth Amendment of the United States Constitution or of this chapter." Cal. Penal Code § 629.72; People v. Jackson, 129 Cal. App. 4th 129 (2005).

The right to privacy in the context of electronic surveillance is protected by the Fourth Amendment. Berger v. New York, 388 U.S. 41, 53, 87 S. Ct. 1873, 1881, 18 L. Ed. 2d 1040 (1967). California's wiretap statute specifically provides that a wiretap is only appropriate if law enforcement can demonstrate and a court concludes that "normal investigative procedures have been tried and have failed or reasonably appear either to be unlikely to succeed if tried or to be too dangerous." Cal. Penal Code §§ 629.50(a) (4) (B); 629.52(d).

Mr. Montes' statutory right to challenge the propriety of the wiretaps in this case is rendered meaningless if he is denied access to the totality of the People's pre-wiretap investigation and cannot challenge, let alone evaluate, the representations made in the affidavits filed in support of the wiretap applications. Denial of this information to Mr. Montes eviscerates his ability to vindicate his Fourth Amendment rights no less than the practices deemed per se unconstitutional in Whitaker v. Garcetti, 291 F.Supp.2d 1132 (C.D. CA 2003).

MR. MONTES HAS A DUE PROCESS RIGHT TO MEANINGFULLY LITIGATE THE NECESSITY OF THE WIRETAP IN THIS CASE

In Berger v. New York, the United States Supreme Court noted the particularly invasive character of wiretapping. "The need for particularity and evidence of reliability in the showing required when judicial authorization of a search is sought is especially great in the case of eavesdropping. By its very nature eavesdropping involves an intrusion on privacy that is broad in scope. The indiscriminate use of such devices in law enforcement raises grave constitutional questions under the Fourth and Fifth Amendments, and imposes "heavier responsibility on this Court in its supervision of the fairness of procedure." Berger v. New York, 388 U.S. 41, 56 (1967).

The California Supreme Court explained the limits of this privilege by stating, "[i]t has long been recognized that, although the government is generally privileged to withhold the identity of informers, the privilege must give way when it comes into conflict with the fundamental principle that a person accused of crime is entitled to a full and fair opportunity to defend himself." People v. Garcia, 67 Cal.2d 830,

836; 434 P.2d 366; 64 Cal. Rptr 110 (1967). In light of the breadth of the redactions, there is no means by which Mr. Montes can meaningfully evaluate and, if appropriate, challenge the propriety of the People's wiretap investigation. "Any other conclusion would be at variance with due process provisions of the state and federal Constitutions." People v. Garcia, 67 Cal.2d 830, 842 (1967)."

II.

Excerpts from Petitioner's Petition for Peremptory Writ of Mandate Filed in the Court of Appeal of the State of California Which Establish that Petitioner Timely and Properly Raised Federal Questions Below

"The People's refusal to produce pre-wiretap investigative materials and the Respondent Superior Court's order permitting the redactions to stand violate Mr. Montes' statutory and Fourth Amendment rights to challenge the wiretap that led to his arrest and the instant prosecution.

Neither the Supreme Court of California nor any Court of Appeal has applied the qualified privileges to wiretap materials nor extended the decision in People v. Hobbs to the litigation of a motion to suppress evidence

obtained from a wiretap. Because a wiretap involves an intrusion on privacy that is broad in scope, the necessity for disclosure of information that may reveal the identity of a confidential informant outweighs the necessity for concealing the informant's identity. Where law enforcement chooses to resort to the "disfavored" tool of wiretapping, the balancing test set forth in sections 1040 and 1041 must be resolved in favor of the right of the individual to meaningfully challenge the propriety of the wiretap.

THIS COURT SHOULD EXERCISE ITS ORIGINAL JURISDICTION BECAUSE THE PETITION RAISES ISSUES OF FIRST IMPRESSION THAT IMPLICATE IMPORTANT CONSTITUTIONAL RIGHTS

Under the wiretap statute and the Fourth Amendment to the United States Constitution, a defendant in a criminal action has a right to move to suppress the contents of intercepted communications, or evidence derived therefrom on the basis that the contents or evidence were obtained in violation of the either the Fourth Amendment or the statutory scheme. Cal. Penal Code § 629.72; People v. Jackson, 129 Cal. App. 4th 129, 144, 28 Cal. Rptr. 3d 136, 146 (2005).

The statutory and Fourth Amendment rights of six defendants are at issue in this case, and the questions raised in this petition are at issue in any case in which the People seek to use evidence obtained from a wiretap in an investigation that also relied upon confidential informants.

A rule of law which permits a defendant to challenge the necessity of a wiretap but withholds from him all information concerning the nature and scope an investigation prior to a wiretap confers an empty right and cannot be consistent with the privacy rights protected by and procedural due process rights conferred by the federal and state wiretap statutes."

III.

Excerpts from Petitioner's Petition for Review Filed in The Supreme Court of California Which Establish that Petitioner Timely and Properly Raised Federal Questions Below

"Under the wiretap statute and the Fourth Amendment to the United States Constitution, a defendant in a criminal action has a right to move to suppress the contents of intercepted communications, or evidence derived therefrom on the basis that the contents

or evidence were obtained in violation of the either the Fourth Amendment or the statutory scheme. Cal. Penal Code § 629.72; People v. Jackson, 129 Cal. App. 4th 129, 144, 28 Cal. Rptr. 3d 136, 146 (2005).

Application of the Qualified Privileges to Information in Wiretap Affidavits Precludes a Defendant from a Meaningful Challenge to the Necessity for a Wiretap in Violation of Both the State and Federal Wiretap Statutes and in Violation of the Fourth Amendment

Federal law plays a uniquely significant role in the interpretation and application of California's wiretap statute because Congress has authorized states to enact their own wiretap statutes "only if the provisions of those laws are at least as restrictive as the federal requirements for a wiretap set out in Title III of the Omnibus Crime Control and Safe Streets Act of 1948 ("Title III")". People v. Jackson, 129 Cal. App. 4th at 146.

Both this Court and the United States Supreme Court have held that the right to move to suppress an illegally obtained wiretap differs significantly from the right to move to suppress other types of evidence. Both California and federal law create a statutory right to suppress

evidence obtained in violation of the wiretap statute, while the suppression of other forms of evidence is a judicially created right. People v. Jackson, 129 Cal. App. 4th at 154; United States v. Giordano, 416 U.S. 505, 528, 40 L.Ed.2d 341, 94 S.Ct. 1849 (1974).

Assuming, arguendo, that the qualified privilege does apply to official information or information that would necessarily identify a confidential informant which is included in an affidavit filed in support of a wiretap application and is relevant to the question of necessity, a defendant's right to challenge a wiretap on the basis of necessity outweighs, as a matter of law, the People's interest in maintaining the confidentiality of official information or the identity of an informant. This is consistent with preservation of the federal Constitutional rights, and federal and state statutory rights that are implicated by surreptitious electronic surveillance. Because the People have invoked these privileges from the outset of this case and the Superior Court reviewed all of the unredacted versions of the investigative reports and wiretap applications in camera, Mr. Montes has no information as to what information has been redacted and why it

is necessary to keep that information confidential. Therefore, Mr. Montes, and every other defendant facing a similar factual scenario, is unable to assess the importance of maintaining the confidentiality of the entire pre-wiretap investigation. It should be apparent to all parties, however, that both California and federal law provide Mr. Montes with an explicit statutory and Constitutional right to litigate the necessity of a wiretap, that the necessity requirement is central to the validity of a wiretap, and, most importantly, that analysis of the necessity of a wiretap necessarily requires a party to have access to information about the successes and failures of an investigation prior to application for a wiretap. A rule of law which permits a defendant to challenge the necessity of a wiretap but withholds from him all information concerning the nature and scope an investigation prior to a wiretap confers an empty right and cannot be consistent with the privacy rights protected by and procedural due process rights conferred by the federal and state wiretap statutes."

MATERIALS PERMITTED BY RULE 14.1.(i)(vi)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CASE NO. BA302020

FELONY COMPLAINT FOR EXTRADITION

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

01 STEVEN MONTES (08/11/1973),

02 DERWIN LASHUN WEBSTER (05/18/1974),

03 ENJOBUL KAREEM KING (01/13/1973),
a.k.a. "CHOCLATE"

04 ANTONIO ANGUIANO (09/25/1982),

05 SAMUEL VIVOROS MURRILLO (10/08/1956)
a.k.a "ABUELO"

06 AGUSTIN ALVAREZ (04/04/1985),
a.k.a. "MONO"

07 OMAR CRUZ (08/05/1986)
a.k.a. "MONON"

08 RUFINO ACEVEDO (07/24/1952)
a.k.a. "INDIO", and

09 JOEL HUERTA NUNEZ (01/06/1966),

Defendant(s).

The undersigned is informed and believes that:

COUNT 1

On or between November 3, 2005 and May 1, 2006, in the County of Los Angeles, the crime of

CONSPIRACY TO COMMIT A CRIME, in violation of PENAL CODE SECTION 182 (a)(1), a Felony, was committed by STEVEN MONTES, DERWIN LASHUN WEBSTER, ENJOBUL KAREEM KING, ANTONIO ANGUIANO, SAMUEL VIVOROS MURRILLO, AGUSTIN ALVAREZ, OMAR CRUZ, RUFINO ACEVEDO and JOEL HUERTA NUNEZ, who did unlawfully conspire together and with another person and persons whose identity is unknown to commit the crime of POSSESSION FOR SALE OF COCAINE, in violation of section 11351 of the HEALTH AND SAFETY Code, a felony; that pursuant to and for the purpose of carrying out the objectives and purposes of the aforesaid conspiracy, the said defendants committed the following overt act and acts at and in the County of LOS ANGELES: SEE ATTACHED.

*****

COUNT 2

On or between November 3, 2005 and May 1, 2006, in the County of Los Angeles, the crime of CONSPIRACY TO COMMIT A CRIME, in a violation of PENAL CODE SECTION 182 (a)(1), a Felony, was committed by STEVEN MONTES, DERWIN LASHUN WEBSTER, ENJOBUL KAREEM KING, ANTONIO ANGUIANO, SAMUEL VIVOROS MURRILLO, AGUSTIN ALVAREZ, OMAR CRUZ, RUFINO ACEVEDO and JOEL HUERTA NUNEZ, who did unlawfully conspire together and with another person

and persons whose identity is unknown to commit the crime of TRANSPORTATION AND SALE OF COCAINE, in violation of Section 11352 of the HEALTH AND SAFETY Code, a felony; that pursuant to and for the purpose of carrying out the objectives and purposes of the aforesaid conspiracy, the said defendants committed the following overt act and acts at and in the county of LOS ANGELES: SEE ATTACHED.

It is further alleged as to count(s) 1 and 2 that the substance in the above charged offense exceeded 80 KILOGRAMS by weight within the meaning of Health and Safety Code section 11370.4(a)(6).

*****

COUNT 3

On or about November 4, 2005, in the County of Los Angeles, the crime of POSSESSION OF MONEY OR INSTRUMENTS OVER $100,000.00, in violation of HEALTH & SAFETY CODE SECTION 11370.6(a), a Felony, was committed by STEVEN MONTES, ENJOBUL KAREEM KING and JOEL HUERTA NUNEZ, who did unlawfully possess money and negotiable instruments in excess of $100,000.00 which were obtained as a result of unlawful SALES of COCAINE with knowledge that the monies and negotiable instruments were so obtained and did also possess that money and negotiable instruments with

the intent to unlawfully purchase COCAINE and did commit an act of furtherance of the unlawful purchase. "NOTICE: Conviction of this offense will require you to register pursuant to Health and Safety Code section 11590. Failure to do so is a crime pursuant to Health and Safety Code section 11594."

*****

COUNT 4

On or about November 28, 2005, in the County of Los Angeles, the crime of POSSESSION OF MONEY OR INSTRUMENTS OVER $100,000.00, in violation of HEALTH & SAFETY CODE SECTION 11370.6(a), a Felony, was committed by STEVEN MONTES and ANTONIO ANGUIANO, who did unlawfully possess money and negotiable instruments in excess of $100,000.00 which were obtained as the result of the unlawful SALES of COCAINE with knowledge that the monies and negotiable instruments were so obtained and did also possess that money and negotiable instruments with the intent to unlawfully purchase COCAINE and did commit an act in furtherance of the unlawful purchase.

"NOTICE: Conviction of this offense will require you to register pursuant to Health and Safety Code section 11590. Failure to do so is a crime pursuant to Health and Safety Code section 11594."

*****

COUNT 5

On or about January 20, 2006, in the County of Los Angeles, the crime of POSSESSION OF MARIJUANA FOR SALE, in violation of HEALTH & SAFETY CODE SECTION 11359, a Felony, was committed by DERWIN LASHUN WEBSTER and ENJOBUL KAREEM KING, who did unlawfully possess for purpose of sale marijuana.

"NOTICE: Conviction of this offense will require you to register pursuant to Health and Safety Code section 11590. Failure to do so is a crime pursuant to Health and Safety Code section 11594."

*****

COUNT 6

On or about January 20, 2006, in the County of Los Angeles, the crime of TRANSPORTATION OF MARIJUANA, in violation of HEALTH & SAFETY CODE SECTION 11360 (a), a Felony, was committed by DERWIN LASHUN WEBSTER and ENJOBUL KAREEM KING, who did unlawfully transport marijuana.

"NOTICE: Conviction of this offense will require you to register pursuant to Health and Safety Code section 11590. Failure to do so is a crime pursuant to Health and Safety Code section 11594."

*****

COUNT 7

On or about February 25, 2006, in the County of Los Angeles, the crime of POSSESSION FOR SALE OF A CONTROLLED SUBSTANCE, in violation of HEALTH & SAFETY CODE SECTION 11531, a Felony, was committed by STEVEN MONTES, DERWIN LASHUN WEBSTER and SAMUEL VIVOROS MURRILLO, who did unlawfully possess for sale and purchase for sale a controlled substance, to wit, cocaine.

"NOTICE: Conviction of this offense will require you to register pursuant to Health and Safety Code section 11590. Failure to do so is a crime pursuant to Health and Safety Code section 11594."

*****

COUNT 8

On or about February 25, 2006, in the County of Los Angeles, the crime of TRANSPORTATION OF A CONTROLLED SUBSTANCE, in violation of HEALTH & SAFETY CODE SECTION 11352 (a), a Felony, was committed by STEVEN MONTES, DERWIN LASHUN WEBSTER and SAMUEL VIVOROS MURRILLO, who did unlawfully transport COCAINE.

"NOTICE: Conviction of this offense will require you to register pursuant to Health and Safety Code section 11590. Failure to do so is a crime pursuant to Health and Safety Code section 11594."

It is further alleged as to count(s) 7 and 8 that the substance in the above charged offense exceeded 80 KILOGRAMS by weight within the meaning of Health & Safety Code section 11370.4 (a) (6).

*****

COUNT 9

On or about February 26, 2006, in the County of Los Angeles, the crime of POSSESSION FOR SALE OF A CONTROLLED SUBSTANCE, in violation of HEALTH & SAFETY CODE SECTION 11351, a Felony, was committed by STEVEN MONTES, AGUSTIN ALVAREZ and OMAR CRUZ, who did unlawfully possess for sale and purchase for sale a controlled substance, to wit, cocaine.

"NOTICE: Conviction of this offense will require you to register pursuant to Health and Safety Code section 11590. Failure to do so is a crime pursuant to Health and Safety Code section 11594."

*****

COUNT 10

On or about February 26, 2006 in the County of Los Angeles, the crime of TRANSPORTATION OF A CONTROLLED SUBSTANCE, in violation of HEALTH & SAFETY CODE SECTION 11352 (a), a Felony, was committed by STEVEN MONTES,

AGUSTIN ALVAREZ and OMAR CRUZ, who did unlawfully transport COCAINE.

"NOTICE: Conviction of this offense will require you to register pursuant to Health and Safety Code section 11590. Failure to do so is a crime pursuant to Health and Safety Code section 11594."

It is further alleged as to count(s) 9 and 10 that the substance in the above charged offense exceeded 1 KILOGRAM by weight within the meaning of Health and Safety Code section 11370.4(a) (1).

*****

COUNT 11

On or about March 1, 2006, in the County of Los Angeles, the crime of POSSESSION FOR SALE OF A CONTROLLED SUBSTANCE, in violation of HEALTH & SAFETY CODE 11351, a Felony, was committed by STEVEN MONTES, AGUSTIN ALVAREZ, OMAR CRUZ and RUFINO ACEVEDO, who did unlawfully possess for sale and purchase for sale a controlled substance, to wit, cocaine.

"NOTICE: Conviction of this offense will require you to register pursuant to Health and Safety Code section 11590. Failure to do so is a crime pursuant to Health and Safety Code section 11594."

*****

COUNT 12

On or about March 1, 2006, in the County of Los Angeles, the crime of TRANSPORTATION OF A

CONTROLLED SUBSTANCE, in violation of HEALTH & SAFETY CODE 11352(a), a Felony, was committed by STEVEN MONTES, AGUSTIN ALVAREZ, OMAR CRUZ and RUFINO ACEVEDO, who did unlawfully transport COCAINE.

"NOTICE: Conviction of this offense will require you to register pursuant to Health and Safety Code section 11590. Failure to do so is a crime pursuant to Health and Safety Code section 11594."

It is further alleged as to count(s) 11 and 12 that the substance in the above charged offense exceeded 80 KILOGRAMS by weight within the meaning of Health and Safety Code section 11370.4(a)(6).

*****

COUNT 13

On or about March 1, 2006, in the County of Los Angeles, the crime of POSSESSION OF MONEY OR INSTRUMENTS OVER $100,000.00, in violation of HEALTH & SAFETY CODE 11370.6(a), a Felony, was committed by STEVEN MONTES, AGUSTIN ALVAREZ, OMAR CRUZ and RUFINO ACEVEDO, who did unlawfully possess money and negotiable instruments in excess of $100,000.00 which were obtained as the result of the unlawful SALE of COCAINE with knowledge that the monies and negotiable instruments were so obtained and did also possess that money and negotiable instruments with

the intent to unlawfully purchase COCAINE and did commit and act in furtherance of the unlawful purchase.

"NOTICE: Conviction of this offense will require you to register pursuant to Health and Safety Code section 11590. Failure to do so is a crime pursuant to Health and Safety Code section 11594."

*****

COUNT 14

On or between February 24, 2006 and February 25, 2006, in the County of Los Angeles, the crime of FALSE COMPARTMENT ACTIVITY, in violation of HEALTH & SAFETY CODE SECTION 11366.8(a), a Felony, was committed by STEVEN MONTES, DERWIN LASHUN WEBSTER and SAMUEL VIVOROS MURRILLO, who did possess, use and control a false compartment with the intent to store, conceal, smuggle and transport a controlled substance within the false compartment.

*****

NOTICE: Conviction of this offense will require the defendant to provide DNA samples and print impressions pursuant to Penal Code sections 296 and 296.1. Willful refusal to provide the samples and impressions is a crime.

THIS COMPLAINT, CASE NUMBER BA302020, CONSISTS OF 14 COUNT(S).

The undersigned swears that he/she is a peace officer for the State of California and that as part of his/her official duties has read and is thoroughly familiar with all aspects of the criminal complaint attached hereto and incorporated herein and that the facts and information set forth in this complaint and in the accompanying documents are true to the best of the undersigned's information and belief and establish probable case for the issuance of a warrant of arrest for the defendant(s).

Signature of officer

Affiant/ Officer

Subscribed, re-issued and sworn before me on _____, 20____, at LOS ANGELES, County of Los Angeles, California, and it appearing to the Court that probable cause exists for the issuance of a warrant of arrest for the above-named defendant(s), the warrant is so ordered.

_____

Judge of the above-titled Court

STEVE COOLEY, DISTRICT ATTORNEY

By: *Signature of Carney*

SEAN CARNEY,

DEPUTY

People v. Montes, et al.

Los Angeles Superior Court

Case Number BA302020

OVERT ACTS

Seizure of $600,000 on November 4, 2005

1. On November 3, 2005 at 9:52 p.m. (Call #13) Steve Montes placed a call to Joel Nunez and asked Nunez to travel to Moreno Valley, California to pick up $600,000 in proceeds from narcotics sales.
2. During that same call Steve Montes asked Nunez if he remembered "el Moreno" that Montes had sent to meet with Nunez before. Nunez said he did. Montes gave Nunez the telephone number for "el Moreno".
3. On November 4, 2005, at 9:11 a.m. Steve Montes called Joel Nunez and gave him directions to a McDonald's restaurant in Moreno Valley, California, so Nunez could meet with Enjobul King and pick up the narcotics proceeds.
4. On November 4, 2005, at10:35 a.m. Steve Montes called Joel Nunez. During this call Nunez told Montez that he had arrived at the McDonalds. Montes told Nunez that he

would send King to deliver the money to Nunez.

5. On November 4, 2005, at 10:40 a.m. Enjobul Kareem king met with Joel Nunez in a parking lot in the vicinity of a McDonald's restaurant at 12371 Perris Blvd., Moreno Valley, California, to deliver $600,000 in narcotics proceeds to Nunez.

6. Shortly after receiving the money Nunez drove away with the $600,000 in two black duffle bags on the back seat of his car.

Seizure of $195,670 on November 28, 2005

7. On November 28, 2005, at 4:26 p.m. (call #131) Steve Montes called Antonio Anguiano. Montes told Anguiano that he had narcotics proceeds ready to be delivered to Anguiano. Montes gave Anguiano directions to meet him at an In 'n Out Burger Restaurant in West Covina.

8. On November 28, 2005, at 6:50 p.m. Antonio Anguiano arrived at parking lot of the In 'n Out Burger Restaurant to pick up narcotics proceeds from Steve Montes.

9. On November 28, 2005, at 7:05 p.m. Steve Montes arrived at the parking lot of the In 'n Out Burger Restaurant with $195,000 in narcotics proceeds in a duffle bag in his car.

10. Montes handed the duffle bag full of money to Anguiano, who gave a "thumbs up" sigh and put the duffle bag into his car and drove away.

11. As Anguiano was being detained by CHP he attempted to eat the cellular telephone SIM card from his cellular telephone in an attempt to destroy it.

Seizure of 175 Kilograms of cocaine on February 26, 2006

12. On February 22, 2006, at 3:01 p.m. (Call #52) Steve Montes called Samuel Viveros Murillo and asked directions to the location of a tractor trailer truck Murillo was going to use to transport 175 Kilograms of cocaine, Murillo gave Montes directions to the truck, which was parked on Gertrude Street in Goodhope, California.

13. On February 22, 2006 at 4:40 p.m. Steve Montes called Samuel Viveros Murillo and told Murillo that he was having difficulty finding the tractor-trailer. Montes and Murillo agreed to meet near a meat market near highway 74 and Navajo Street.

14. On February 23, 2006 at 12:30 p.m. Steve Montes called Samuel Viveros Murillo and

told Murillo he was waiting for the "guys" with the cocaine.

15. On February 23, 2006 at 4:39 p.m. Steve Montes again called Samuel Viveros Murillo. Montes spoke with Murillo and another uncharged co-conspirator about whether the hidden compartment in the tractor-trailer would be ready for the transportation of the 175 kilograms of cocaine.

16. On February 23, 2006 at 6:52 a.m. Steve Montes called Samuel Viveros Murillo and told Murillo that the tractor-trailer needed to leave the next day with the load of cocaine.

17. On February 24, 2006 at 3:54 p.m. Steve Montes called Samuel Viveros Murillo and asked Murillo whether the hidden compartment in the tractor-trailer was ready to transport the cocaine. Murillo told Montes the truck was ready. Montes told Murillo that he would check out the location where the cocaine would be transported into the tractor-trailer. He also instructed Murillo to leave space near the tractor-trailer for Montes to leave his car.

18. On February 24, 2006 at 6:59 p.m. Samuel Viveros Murillo drove a tractor-trailer truck

from Gertrude Street, in Goodhope, California to the vicinity of a Motel 6 and an El Pollo Loco Restaurant at 1343 South Nogales Ave., Rowland Heights, California.

19. On February 24, 2006 at 8:14 p.m. Samuel Viveros Murillo called Steve Montes and let him know that he was at the El Pollo Loco Restaurant and that he was ready to receive the cocaine. Montes told Murillo he would meet him in an hour.

20. On February 24, 2006 at 10:16 p.m. Steve Montes called Samuel Viveros Murillo and gave Murillo instructions on how to load the cocaine into the hidden compartment on the tractor-trailer. Montes told Murillo that he was driving behind the guys who were transporting the cocaine.

21. On February 24, 2006 at approximately 10:19 p.m. Steve Montes, drove a 1999 Dodge truck behind Derwin Webster as Webster drove a Nissan Quest loaded with 175 Kilograms of cocaine. Montes and Webster parked next to the tractor-trailer that Samuel Viveros Murillo had parked near the El Polo loco in Rowland Heights, California.

22. On February 24, 2006, at 10:23 p.m. Derwin Webster called Steve Montes and asked

"what was up." Montes told Webster that they could not transfer the cocaine from Webster's car to the tractor-trailer. Webster agreed adding that there were cars there. Montes told Webster to "get the fuck out of there" and that they would exchange somewhere else.

23. On February 24, 3006 at 10:24 p.m. Samuel Viveros Murillo called Steve Montes. They agreed to attempt the exchange of cocaine from Derwin Webster to Murillo at another location further up the street. Montes described the location as "a bit behind it [the hamburger place] like they had done before.

24. On February 24, 2006 at 10:40 p.m., Steve Montes met with Derwin Webster near a Denny's restaurant at 1425 Nogales Street, Rowland Heights, California.

25. On February 24, 2006 at 10:44 p.m. Samuel Viveros Murillo moved the tractor-trailer to an empty parking lot at Cheng Cheng Plastics, Inc., located at 19515 East Walnut Drive, Walnut, California.

26. On February 24, 2006 at 11:00 p.m. Derwin Webster drove to the parking lot of Cheng Cheng Plastics, Inc. and met with Samuel Viveros Murillo. Both Webster and Murillo

began loading duffle bags full of cocaine into the cab of the tractor trailer.

27. While Derwin Webster and Samuel Viveros Murillo loaded cocaine into the tractor-trailer Montes drove around the area to check for law enforcement presence.

28. On February 24, 2006 at 11:03 p.m. Derwin Webster left the parking lot of Cheng Cheng Plastics, Inc. Shortly afterward Steve Montes drove into the parking lot and parked next to the tractor trailer. A short time later Montes left.

29. On February 24, 2006 at 11:28 p.m. Samuel Vivero Murillo called Steve Montes to ask permission to change the way the cocaine was loaded into the hidden compartment in the tractor-trailer. Montes gave Murillo instructions on how to pack the cocaine into the tractor-trailer.

30. On February 26,2006, at 11:54 p.m. Samuel Viveros Murillo began transporting the 175 kilograms of cocaine in the tractor-trailer.

Seizure of 3 kilograms of cocaine on February 26, 2006

31. On February 26, 2006, at 5:25 p.m. Steve Montes received a call from Augustine Alvarez. Alvarez asked Montes if an

uncharged co-conspirator was going to take the three kilograms of cocaine. Montes replied that he was and instructed Alvarez to give the uncharged co-conspirator three kilograms of cocaine.

32. On February 26, 2006, Augustine Alvarez and Omar Cruz left a residence located at7912 Lemont Road, Downers Grove, Illinois and drove to a shopping center where they picked up a Honda Accord used by an uncharged co-conspirator. Alvarez and Cruz returned to the residence on Lemont Road.

33. A short time later Alvarez and Cruz returned to the parking lot of the shopping center and dropped off the Honda Accord. The Honda Accord was subsequently picked up by the uncharged co-conspirator who began to transport the three kilograms of cocaine.

Seizure of 175 kilograms of cocaine on March 1, 2006

34. On February 23, 2006 at 10:58 p.m. Steve Montes placed a call to an uncharged co-conspirator identified as 'Robert." Among other things, during this conversation Montes told "Robert" that Montes, "Robert"

and Montes' brother Michael Montes would split the profits from the sale of the 175 kilograms of cocaine that were being transported to Illinois.

35. Beginning on a date unknown and continuing until March 1, 2006, Rufino Acevedo transported 175 kilograms of cocaine in a tractor-trailer from the west coast of the United States to Illinois.

36. On March 1, 2006, Rufino Acevedo placed several calls to Michael Montes' cellular telephone to get directions on how to meet with Agustine Alvarez and Omar Cruz to transfer the 175 kilograms of cocaine.

37. On March 1, 2006, Agustine Alvarez and Omar Cruz left the stash house at 7912 Lamont Road, Downers Grove, Illinois to pick up 175 kilograms of cocaine from Rufino Acevedo.

38. On March 1, 2006, Agustine Alvarez met with Rufino Acevedo at an industrial park at 10321 Werch Drive, Woodbridge, Illinois.

39. At a meeting Rufino Acevedo gave several duffle bags containing 175 kilograms of cocaine to Agustine Alvarez. While the transfer of cocaine was taking place Omar Cruz kept a look out for law enforcement a short distance away.

40. After a transfer of cocaine was complete Agustin Alvarez began transporting the 175 kilograms of cocaine. Omar Cruz drove in tandem with Agustine Alvarez in a separate car.

STATEMENT OF PROBABLE CAUSE

Background of the investigation

Since November, 2005, BNE SA's and TFO's have been conducting a court authorized wire interception investigation of a wide-spread multi-hundred kilogram cocaine narcotics trafficking and methamphetamine production/trafficking organization based in Southern California. Over the course of this investigation, investigators have learned that several individuals operating in Mexico have been smuggling cocaine as well as marijuana, methamphetamine and possible heroin, from Mexico, across the border into Southern California where multiple narcotics stash facilities have been utilized to temporarily store narcotics where other traffickers transport the narcotics from Southern California to various locations across the United States via tractor-trailer, and other motorized vehicles, to destinations such as Chicago, Illinois; New York, New York; Atlanta, Georgia; Boston, Massachusetts, and other locations. Investigators have also learned that members of this organization transport millions of dollars in narcotics proceeds from the aforementioned locations to Southern California and subsequently into Mexico.

Based on the information obtained through the court authorized wire interceptions and surveillance in support of the wire interceptions seizures, totaling more than 350 kilograms of cocaine, 50 pounds of

methamphetamine ("ICE"), 659 pounds of marijuana, 5 firearms, and more that $1,200,000.00 in United States currency and 4 arrests have been made in several other states. Furthermore, SAs identified much of the organization here in the Los Angeles/Riverside area as well as several of the stash houses used by the organization to maintain narcotics, narcotics proceeds, and records.

Steven MONTES, Enjobul KING, and Joel NUNEZ

Based on court authorized intercepted conversations between Steven MONTES and Joel NUNEZ on November 3, 2005, and November 4, 205, investigators believed that Steven MONTES was arranging the delivery of a large sum of currency to Joel NUNEZ.

On November 3, 2005, court authorized intercepted conversations occurred between MONTES and NUNEZ. MONTES told NUNEZ that he had a receipt (money) for him and asked NUNEZ if he would be able to come up to Moreno Valley. NUNEZ said he would be there tomorrow. MONTES asked NUNEZ if he remembered "el Moreno" (dark-skinned male believed to be Enjobul KING) that he had sent before. NUNEZ said he did remember him. NUNEZ acknowledged and said he would call tomorrow. NUNEZ asked what time he should be there. MONTES replied that it was up to NUNEZ. MONTES informed NUNEZ it was only two bundles. NUNEZ

asked MONTES how much he would be delivering. MONTES said he was told it was 600 ($600,000). NUNEZ acknowledged and said he would call MONTES.

On November 4, 2005, court authorized intercepted conversations occurred between MONTES and NUNEZ. MONTES told NUNEZ to exit on Perris Blvd., make a left and go to McDonald's. MONTES added that he would send a guy to meet him. NUNEZ said he was driving a small white GMC truck.

Surveillance saw Joel NUNEZ driving the white GMC Sonoma pickup (CA LIC 7E41719 and arrive at the Taco Bell located at 23880 Alessandro, Moreno Valley.

Surveillance saw Enjobul KING driving a silver Nissan Quest arrive at the Taco Bell located at 23880 Alessandro, Moreno Valley. Surveillance saw KING make eye contact with NUNEZ and nod. The Nissan Quest and GMC Sonoma drive behind the McDonald's in an adjoining parking lot (12371 Perris Blvd., Moreno Valley, CA). Visual contact was lost on both vehicles for approximately one minute. The Nissan Quest drove out of the area.

Surveillance followed the GMC pickup out of the area. CHP conducted a traffic stop on the pickup. During the stop, Officers saw two duffle bags in the back seat of the Sonoma. Officers asked NUNEZ if the bags belonged to him (NUNEZ). NUNEZ stated that

the bags were not his and belonged to a friend named "Moreno". Officers opened the bags, which contained 60 bundles of U.S. currency, wrapped in duct tape. The currency was seized, totaling $600,049.

Steven MONTES and Antonio ANGUIANO

Based on court authorized intercepted conversations between Steve MONTES and Antonio ANGUIANO on November 28, 2005, investigators believed that Steve MONTES was arranging the delivery of a large sum of currency to a male named "Mark", but later identified as Antonio ANGUIANO.

On November 28, 2005 numerous court authorized intercepted conversations occurred between MONTES and ANGUIANO. MONTES said he had "something" to give to ANGUIANO and gave ANGUIANO directions to the In 'N Out at 2940 El Garvey Ave., West Covina, CA.

Surveillance was established at the In 'N Out. Surveillance saw a blue Chevrolet Tahoe with paper dealer plates enter the In-N-OUT parking lot and park west of the restaurant, facing north. The driver, later identified as ANGUIANO, walked from the Tahoe and into the restaurant. ANGUIANO remained in the restaurant for approximately five minutes, then returned to the blue Tahoe and sat in the drivers seat. Surveillance saw ANGUIANO talking on a cellular telephone.

Numerous court authorized intercepted conversations occurred between MONTES and ANGUIANO. ANGUIANO asked if MONTES was getting closer. MONTES said yes. ANGUIANO said that he was already at the meeting place. MONTES asked what kind of a vehicle ANGUIANO was driving. ANGUIANO said he was in a blue truck. MONTES asked what [truck] he [ANGUIANO] was in. ANGUIANO said in the blue truck. MONTES said there are several trucks there and that he [MONTES] is there in a grey auto. ANGUIANO just noticed that MONTES went past him. ANGUIANO will signal MONTES with the lights.

Surveillance saw silver Dodge Stratus, with Washington state license plates, drive into the IN-N-OUT parking lot from the west driveway. Surveillance saw the Stratus drive past the blue Tahoe. The Stratus made a U-turn in the parking lot and stopped directly behind and perpendicular to the Tahoe. ANGUIANO stepped out of the drivers seat of the Tahoe and walked to the open passenger side window of the Stratus. Surveillance saw MONTES hand a duffle bag (2' x 1' gym-type bag) to ANGUIANO. ANGUIANO gave a "thumbs up" signal and walked to the Tahoe. ANGUIANO put the duffel bag into the open window of the rear hatch of the Tahoe. ANGUIANO got into the Tahoe and the Tahoe and Stratus split up and left the area. Surveillance units

followed the Tahoe out of the area. Surveillance saw the Tahoe arrive at the Eastland Valley Mall and park south of Burlington Coat Factory 2753 Center drive, West Covina. Surveillance saw ANGUIANO get out of the drivers seat of the Tahoe and walk to the rear hatch and open it. ANGUIANO stood on the bumper and had half of his body in the rear cargo area for approximately 5-7 minutes. ANGUIANO was manipulating and moving items around in the cargo area. A few minutes late, ANGUIANO walked to the drivers side of the Tahoe. ANGUIANO stepped away from the Tahoe and threw two plastic bags in a shopping cart parked beside the Tahoe. ANGUIANO got into the drivers seat of the Tahoe and drove out of the area. Surveillance units followed the Tahoe out of the area.

California Highway Patrol (CHP) Officer C. Pendleton ID #10760, conducted a traffic stop on the Tahoe at true St., north of Telegraph in Pico Rivera, CA. During the stop, Officer Pendleton had the driver Antonio ANGUIANO, step out of the vehicle and onto the sidewalk. While attempting to remove the temporary registration from the windshield, Officer Pendleton looked inside the vehicle and saw a black bag, similar to an organizer, on the rear floorboard. The black organizer was unzipped and Officer Pendleton saw a corner of a large bundle of currency stuffed inside.

A CHP narcotics detection dog conducted a sniff of the Tahoe. K-9 Rusty jumped into the Tahoe and alerted to the presence of narcotics at each location where currency was located.

A thorough search of the Tahoe was conducted, and 96 bundles of U.S. currency were retrieved from various locations throughout the vehicle. One bundle was found and seized from the rear pocket of the front passenger seat. One bundle was found and seized from a black bag located in the rear floorboard. The majority of the bundles were found and seized from the jack and spare tire tool compartment in the left rear cargo area. The total amount of currency was $195,670.

Enjobul KING, Derwin WEBSTER, Armando SANCHEZ, and Jesus SANCHEZ

During the course of the court authorized wire interceptions it became apparent to investigators that 26430 Elder Avenue was being used to store narcotics and narcotics proceeds. On January 19, 2006, Surveillance was established at 26430 Elder Avenue, Moreno Valley, CA.

Surveillance saw silver 2001 Dodge Stratus bearing Washington license plate #998MUS and a silver 2005 Nissan Quest bearing California License Plate #5KAC828 parked in the driveway. SAs know the vehicles from previous operations and have never seen any vehicles parked in the driveway at the

residence. Any vehicles are usually parked inside the garage and garage doors are closed. It is also important to note the Dodge was seen by SAs at Steve MONTES' residence January 11, 2005.

Surveillance saw WEBSTER, KING exit the residence. WEBSTER got into the Nissan while KING repositioned the Dodge from in front of the small garage door to the far west area of the driveway. KING got into the Nissan with WEBSTER and left the area. Surveillance followed KING and WEBSTER.

Surveillance saw the Nissan park in front of the Mariscos El Rey Restaurant located at 12190 Perris Boulevard, Moreno Valley, CA. A Hispanic male adult (HMA) walked out of the restaurant over to the Nissan and talk to KING and WEBSTER through the driver-side of the Nissan, then got into a black Cadillac Escalade bearing Illinois license plate #9345450. The Nissan and Cadillac drove in tandem through the parking lot. The vehicles departed the shopping center making several abrupt turns but remained in the general vicinity consistent with counter surveillance techniques. SAs temporarily lost sight of the Nissan and Cadillac near the Save-On Shopping Center. Surveillance saw the Cadillac (unoccupied) parked near the Mariscos El Rey Restaurant and saw the Nissan drive eastbound on Elder Avenue from the Sav-On Shopping Center.

Surveillance saw WEBSTER in the Nissan return to the residence. WEBSTER backed the Nisan into the driveway in front of (and inches from) the large garage door. Surveillance did not see KING inside the Nissan. Surveillance saw KING return to the residence driving a 1994 Ford van bearing California license plate #5RKV588. KING backed into the driveway in front of the small garage door at Elder Ave. Surveillance saw KING and WEBSTER loading something into the back of the Ford van.

Surveillance saw KING enter the Ford van and WEBSTER enter the Nissan and leave the residence. Surveillance followed the vehicle back to the parking lot at the Mariscos El Rey restaurant. Surveillance saw KING exit the Ford van and get into the Nissan. The Nissan then departed the restaurant.

Surveillance saw the Hispanic male get into the Ford van and drive away. Surveillance followed the Ford van to 14862 ½ Larkspur Street, Sylmar, CA and maintained surveillance eon the van.

A California State Search Warrant was served at 14862 ½ Larkspur Street, Sylmar, CA and found 650 pounds of marijuana in the Ford van that was loaded by KING and WEBSTER and followed from Moreno Valley. Armando SANCHEZ and Jesus SANCHEZ were found in the residence and detained. Jesus SANCHEZ told agents that he had the keys to van in his pants pocket that was on his dresser in his

bedroom. A pistol with the serial number scratched off was found under Jesus SANCHEZ' bed. Jesus SANCHEZ later waived his Miranda rights and provided a written statement in Spanish. Upon translation, the statement read as follows: I Jesus SANCHEZ kept a van for a friend the day of January 19, 2006. The marijuana that is in my brother's bed is mine. He is not at fault and neither is my family. The pistol in my bedroom is mine. I don't know why the van is full of marijuana.

Agents found a 4.5 pound bundle of marijuana, wrapped in clear plastic, under Armando SANCHEZ' bed, along with a roll of clear plastic wrap. Agents found 5 firearms in Armando SANCHEZ' bedroom, with serial number scratched off of two of the firearms.

Steven MONTES, Derwin WEBSTER, and Samuel VIVEROS

Over several days, court authorized interception between MONTES, WEBSTER, and "Joel" led to a seizure of 175 Kilograms of cocaine from a semi-truck in Rowland heights, CA.

On February 22, 2006, in a court authorized interception, MONTES went to meet with Joel (a semi truck driver that works for MONTES). Joel gave MONTES directions to the Guadalupana market, east of I-15 off of Highway 74 as a reference point. Due to

the road construction and the lack of road signs in the area, Joel gave MONTES further directions to the house where the semi-truck was parked.

On February 23, 2006, in a court authorized interception, MONTES asked Joel if they were ready. Joel said that it would be ready tomorrow and handed the phone to an unknown third person (U/M). U/M told MONTES that he was working on it and that he needed some good glue for the carpet (to finish the hidden compartment). U/M gave the phone back to Joel. MONTES told Joel to take the U/M to an auto parts store for the glue. Joel told MONTES there was an auto parts store in the nearby town of Perris that he would go to.

On February 24, 2006, SA's located the semi-truck on Gertrude St., in Perris, CA and initiated surveillance. In a court authorized interception, MONTES told Joel to move before nightfall so the MONTES could give Joel "that" (narcotics), and then Joel would be ready to leave the next day. That evening, the semi-truck left and surveillance followed it to Rowland Heights, CA. In numerous other court authorized interceptions, MONTES and Joel talk about Joel's location and how safe it was for the transfer, as well as where "they" (narcotics) would fit in the semi-truck. MONTES said it was "6" (packages of kilos) all together and to put the ones in the middle as a whole and that "4" would fit there. MONTES said

the other ones might have to be taken apart. MONTES told Joel that if they do not all fit, he would take them back tomorrow.

MONTES arrived with two other vehicles. In a court authorized interception to an unidentified number (possibly WEBSTER), MONTES said to get out of the area because there were too many cars.

Surveillance followed the semi-truck to a few block to E. Walnut drive, where it parked in an industrial park along with other semi-trucks. Surveillance units saw a minivan pull up next to the semi-truck and WEBSTER got out. WEBSTER handed Joel several bags, then got back into the van and left the area. Later that evening, in a court-authorized interception, Joel asked MONTES if it would be a problem if he (Joel) took "them" (kilograms of cocaine) out of the bag because they did not fit like that. MONTES said "yes" and asked if the "4" didn't fit there or not. Joel said only 3 of them fit. MONTES told Joel put "3" in the bag and crush the rest of them. Surveillance maintained visual contact of the semi-truck.

On February 25, 2006, surveillance saw the semi-truck drive out of the industrial park on onto Highway 60. A uniformed CHP Officer conducted a traffic stop on the semi-truck. A CHP narcotics detection canine was used to conduct a "sniff" of the semi-truck, and gave a positive alert. A search of the

semi-truck revealed 175 kilograms of cocaine in the sleeper compartment of the semi-truck. The driver of the semi-truck was identified as Samuel VIVEROS (AKA Joel).

Steven MONTES and Michael MONTES

Steven and Michael MONTES are brothers, and have an equal partnership in the MONTES DTO. They confer with each other regarding shipments of narcotics, payments for those shipments, and the distribution of proceeds from those shipments. Numerous court authorized intercepted conversations between Steve and Michael MONTES, as well as other individuals illustrate the partnership between the two brothers.

On February 22, 2006, in a court authorized intercepted conversation, "Robert" spoke with Michael MONTES on Steve MONTES' cell phone. Michael said Robert owed at least "200" ($200,000). Robert said that he had "300" ($300,000) and that Michael needed to pick up what Robert had "right there" (referring to a quantity of narcotics).

On February 23, 2006, in a court authorized intercepted conversation, Michael spoke to Steve. During the call, Michael told Steve the "40" (40 pounds of methamphetamines or 40 kilos of cocaine) were from the same guy that he and Steve saw yesterday. Steve acknowledged and said the guy already got more somewhere else. Michael said it was the same "40", 20

and 20 and added that the told the guy after Friday. Steve acknowledged.

On February 23, 2006, in a court authorized intercepted conversation, Steve spoke to "Robert". During the call, Steve and Robert discussed transporting a load of narcotics across the border. Steve said his customer could pay at least "75 to 100" ($75,000 to $100,000) and they had to give his customer a good price. Steve said that he had to make arrangements and his customer asked how many were involved. Steve told his customer that it was him, Robert, and his brother (Michael). Steve told Robert that his customer said that if they could get them (kilos of cocaine) at "15" ($15,000) then they would make "3 pesos" ($3,000) if they sell them at "18" ($18,000). Steve said he could sell them for (17.5) ($17,500) and let the customer deal with the rest and they (Steve, Robert, and Michael) would divide the profit.

On February 26, 2006, in a court authorized intercepted conversation, Steve spoke with Michael. During the call, Michael asked if El Indio had left. Steve said El Indio was already home and would call him now. Michael said the "El Grande" had "300 and something" (referring to a quantity of narcotics) ready. Steve acknowledged. Steve said the he needed to send some (narcotics) to "A" (unknown meaning). Michael instructed Steve to send them (narcotics) right now.

Steve said he had no one to take the product. Michael suggested that El Indio's load should be given to a third party and Steve could keep El Lloron's product (narcotics).

On February 27, 2006, in a court authorized intercepted conversation, Michael spoke with Steve. This telephone conversation is in regards to an arrest and seizure of 3 kilos of cocaine and over $40,000 in Chicago. During the call, Michael asked if something happened to Colima yesterday. Steve affirmed and Michael asked if Colima was okay. Michael asked if it was a little or a lot. Steve mumbled something and Michael said that it was not too bad. Steve also said 40 bucks ($40,000). Michael said that was a lot more now.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 28th day of April, 2006, at 4:20 P.M. Los Angeles, California.

Signature of Johnnie M. Wilde
Johnnie M. Wilde, Special Agent
California Department of Justice
Bureau of Narcotics Enforcement

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

IN THE MATTER OF THE APPLICATION OF THE DISTRICT ATTORNEY OF THE COUNTY OF LOS ANGELES FOR AN ORDER AUTHORIZING THE INTERCEPTION OF WIRE COMMUNICATIONS

WIRETAP NO. 05-198
AFFIDAVIT

AFFIDAVIT IN SUPPORT OF APPLICATION FOR AN ORDER AUTHORIZING THE INTERCEPTION OF WIRE COMMUNICATIONS

I, Javier Salaiz, being duly sworn, declare and state:

TRAINING AND EXPERIENCE

1) I AM Special Agent with the California Department of Justice, Bureau of Narcotics Enforcement ("BNE") and have been so employed since November 1999. AS Special Agent for BNE, I am a sworn "Peace Officer" per California Penal Code Section 830.1 and I conduct investigations involving felonies, defined by California Health and Safety Code Sections 11351, 11352, 11370.6, 11378, 11379, 11379.6 and Penal Code section 182, possession with the intent to distribute narcotics, sale of narcotics, money

laundering, manufacturing of narcotics and conspiracy with respect to substances containing cocaine and/or methamphetamine where the substances exceed three pounds of sold substance by weight, collectively referred to as the Target Offenses. Prior to my employment with BNE, I was employed with the Chula Vista Police Department from May 1993 to December 1999. I am certified by the California Attorney General to conduct wiretaps as authorized in California Penal Code section 629, et Seq. I am currently assigned to the BNE San Diego Regional Office, Border Interdiction Team (BIT), and have been so assigned for about six months. The groups primary function is investigate persons and organizations involved in the distribution and sales of controlled substances.

2) As a Special Agent of DOJ/BNE, I have investigated illicit controlled substance trafficking in Imperial County, San Diego County, the surrounding areas, and internationally. I have formal training and experience in controlled substance investigations, and I am familiar with the manner in which controlled substances are packaged, marketed, and consumed. I have received training in the identification of all types of controlled substances by sight and odor. In the course of my employment, I have become familiar with the ordinary meaning of controlled substance slang and jargon, I am familiar with the manners, and

techniques of traffickers in controlled substances as practiced locally and elsewhere. I have also participated in several investigations involving money laundering of drug proceeds. During these investigations I have conducted debriefings of defendants, informants and cooperating witnesses. I have also conducted surveillance of narcotics traffickers and money launderers, assisted in the preparation of affidavits for court authorized wire interceptions and in the execution of search warrants. I am familiar with the methods of operation used by drug traffickers and money launderers, including the importation and concealment of drug proceeds. Further, I am aware that drug traffickers often communicate with their associates using telephones, cellular telephones, pre-paid telephones, radios, and pagers. I am also aware that drug traffickers often change telephones, radios, and pagers as a means to evade detection by law enforcement. Further, I have learned that large-scale narcotics traffickers often will utilize several cellular phones, including prepaid phones as a method to compartmentalize their drug trafficking activities and as a means to evade detection by law enforcement.

3) During my career I have conducted and participated in numerous narcotics investigations including those connected with (1) unlawful importation, possession with intent to distribute, and

distribution of a controlled substance, (2) the laundering of monetary instruments derived from unlawful narcotics activities, (3) the conducting of monetary transactions involving the proceeds of unlawful activities and (4) conspiracies associated with narcotics offenses, in violation of California Health and Safety Code sections 11351, 11352, 11378, 11379, 11383, possession with intent to distribute narcotics, and sale of narcotics; 11370.6 & 11370.9, money laundering; 11379.6, manufacture of a controlled substance and Penal Code section182. conspiracy. In conducting those investigations, I utilized a variety of investigative techniques and resources, including physical surveillance, undercover agents, and the use of cooperating individuals. I have worked in an undercover capacity selling, negotiating for, and purchasing various controlled substances from individuals under investigation.

4) Through those investigations, my training and experience, and conversations with other agents and law enforcement personnel, I have become familiar with methods used by narcotics traffickers to manufacture methamphetamines, smuggle, safeguard and distribute narcotics and to collect ad launder narcotics related proceeds. I have become familiar with methods employed by narcotics organizations, and their sophisticated tactics, which include the utilization of debit calling, prepaid cellular telephones,

public phones, wireless communications technology such as cellular telephones and pagers, counter surveillance, elaborately planned smuggling schemes tied to legitimate businesses, false or fictitious identities, and coded communications and conversations.

5) I am familiar with the facts and circumstances of this investigation because of my participation in this investigation and reports made to me by other law enforcement officers involved with this investigation. My training and experience as a BNE Special Agent, my familiarity with reports by other law enforcement personnel, and my review of confidential communications conducted by myself or other law enforce personnel, or by individuals either associated with or who have knowledge of the activities of the drug trafficking organization managed by Steve MONTES, cause me to believe that the information contained in the following paragraphs are true.

6) Except otherwise noted, the information set forth in this affidavit has been provided by a CS, BNE agents, ICE agents, multi-agency federal, state, and local drug task force officers or other law enforcement agent and officers. Unless otherwise noted, whenever in this affidavit when I assert that a statement was made, the information was provided by another law enforcement officer (who may have had either direct or hearsay knowledge of the statement) to whom I have

spoken or whose report I have read and reviewed. Likewise, information resulting from surveillance, except where otherwise indicated, does not necessarily set forth my own observations but rather has been provided directly or indirectly by BNE agents or other law enforcement agents/officers who conduct such surveillance.

7) Since this affidavit is being submitted for the limited purpose of authorization for the interception of wire communications to and from Target Telephone #1, and Target Telephone #2, I have not included every fact known to me concerning this investigation. Rather, I have set forth only the facts I believe are necessary to establish the foundation for an order authorizing the requested interception.

TARGET DEVICES

8) This affidavit is submitted in support of an application for an order authorizing the interception of Target telephone #1, a Nextel cellular phone, issued by Nextel, with telephone number (626) 262-8184, UFMI 126*923*9642, IMSI 316010101172364, subscribed to by Raul Sanchez, PO Box 54988, Irvine, CA, 92619-4988, and used by MONTES (hereafter "Target Telephone #1") and the interception of Target Telephone #2, a Virgin Mobil cell phone, issued by Virgin Mobile, with telephone number (626) 392-9119, ESN 03301687752, subscribed to by Delvino Dia, 2167

Siesta Avenue, La Puente, CA and used by MONTES (hereafter "Target Telephone #2")

9) Based on this investigation, set forth in detail below, I assert that there is probable cause to believe that the Target Subjects (as defined below) have committed, are committing, and are about to commit the crimes of possession for sale, transportation. And sale of a controlled substance in violation of sections 182 of the California Penal Code (PC), 11351, 11352, 11378, 11379, 11383, and 11379.6 of the Health and Safety Code (H&S) and with respect to a substance containing cocaine, methamphetamine and manufacturing of controlled substance.

a. Criminal conspiracy t possess with the intent to distribute a controlled substance, possession with intent to distribute, and distribution of controlled substances, in violation of 182 PC;

b. Possession of controlled substances (cocaine) for sale, in violation of 11351 H&S;

c. Transportation of controlled substance (cocaine), in violation of 11352 H & S;

d. Possession of controlled substance (methamphetamine), in violation of 11379 H&S;

e. Transportation of controlled substance (methamphetamine), in violation of 11379 H&S;

g. Possession of chemicals with the intent to manufacture methamphetamine, in violation of 11383 H&S;

h. Manufacturing, compounding, converting, producing a controlled substance, in violation of 11379.6 H&S;

10) Based on the facts set forth in this affidavit, I believe that there is probable cause to believe that:

a. ONTES, Enjobul KING (Hereafter, "KING"), Michael MONTES (hereafter M. MONTES), Juan ARELLANO (Hereafter ARELLANO) and Lalo CABALLERO (Hereafter CABALLERO) have committed, are committing, or will commit one or more of the target Offenses as detailed below;

b. Wire communication concerning the Target offenses will be obtained through the interceptions of Target Telephone #1 and Target Telephone #2. In particular, I believe that the communications to be intercepted will concern, and will provide evidence pertaining to, the goals of this investigation, including but not limited to:

1. Determining who supplies cocaine to the MONTES drug Trafficking Organization ("MDTO");

2. Who manufactures methamphetamine for the MDTO;

3. Where the methamphetamine laboratory used to manufacture methamphetamines located;

4. How the MDTO distributes the controlled substances it possesses;

5. How the MDTO pays for the controlled substances and chemicals it obtains and how it distributes the profits it receives from manufacturing/distributing controlled substances ("the goals of the investigation");

c. Target Telephone #1 and Target Telephone #2 are being used, or are about to be used in connection with the commission of one or more Target Offenses or are leased to, listed in the name of, or commonly used by MONTES; and

d. Because additional of the above described type of communications will occur after the first has been intercepted, the nature of the investigation is such that the authorization for interception should not automatically terminate after the first interception but should continue until communications are intercepted which fully reveal the goals of the investigation or for a period of 30 days, whichever occurs first.

PRIOR APPLICATIONS

11) On Or about October 24, 2005 checks were made with the indices of the California Department of Justice Western Information ("WSIN"). These indices indicate there have not been any other known oral, wire, or electronic interceptions over Target Telephone #1 and Target Telephone #2.

PROBABLE CAUSE

12) In February 2005, **(REDACTED)** narcotic activity of MONTES.

13) **(REDACTED)**

a. **(REDACTED)**

b. Information furnished by **(REDACTED)** has resulted in the arrest of at least seven individuals for controlled substance violations and the recovery of substantial amounts of narcotics and drug proceeds.

c. To my knowledge, **(REDACTED)** has never given me any false or misleading information, nor have I been given a reason to doubt **(REDACTED)** veracity and ability to identify controlled substances, including heroin, cocaine, marijuana, and methamphetamine. **(REDACTED)** has been providing reliable information to me **(REDACTED)** and is in good standing.

14) **(REDACTED)** is being paid for expenses, which s/he incurs. **(REDACTED)** is prepared to testify if necessary but of course, could testify as to events of which s/he has personal knowledge.

(REDACTED)

15) **(REDACTED)** when MONTES was arrested for drug trafficking and was sent to prison.[1]

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[1] A criminal history check of MONTES revealed his was arrested in 1996 by San Diego DEA for possession with the intent to distribute, possession of ephedrine with the intent

16) **(REDACTED)**

17) **(REDACTED)**

18) **(REDACTED)** cocaine.[2] MONTES **(REDACTED)** methamphetamine and marijuana in the same manner. MONTES also **(REDACTED)** which eventually is smuggled into Mexico.[3]

19) **(REDACTED)** MONTES is currently carrying and utilizing up to five different cellular phones to conduct his narcotics trafficking activities including Target Telephone #1 and Target Telephone #2. **(REDACTED)** from unknown individuals then use different phone to place a call. On one occasion **(REDACTED)**[4]

20) **(REDACTED)**[5]

21) **(REDACTED)**[6]

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to manufacture methamphetamine and was sentenced to 30 months in federal custody. MONTES is not currently under supervised release or probation.

[2] Agents have been unable to find records to confirm MONTES' assertions that he owns a legitimate trucking business. **(REDACTED)**

[3] I know based on my training and experience in investigating large scale DTO's, that proceeds from the sales of illicit narcotics are transported south into Mexico in tractor trailers to avoid detection by law enforcement.

[4] This phone call was not made from **Target Telephone #1**, but rather to another telephone that MONTES was using at the time, but which, **(REDACTED)** cancellation of service, I believe MONTES is no longer using. In any case, we are not seeking authorization to intercept the telephone that MONTES used in this call.

[5] This telephone call **(REDACTED)** it cannot be verified by toll records as the only known number **(REDCATED)** for which we cannot obtain information about incoming calls.

22) In **(REDACTED)**[7]

23) On **(REDACTED)** MONTES' brother, "Michael" (M. MONTES) **(REDACTED)** M. MONTES **(REDACTED)**[8]

24) **(REDACTED)** At my direction **(REDACTED)**[9]

25) At my direction **(REDACTED)**[10]

26) On **(REDACTED)** a BNE agent and I **(REDACTED)** At my direction **(REDACTED)** (626) 217-4011 issued by T-Mobile, IMSI 310260203953394, subscriber not given, DOB 04/01/1975, address not given (hereafter "dropped T-Mobile") and spoke to MONTES. I observed **(REDACTED)** for the dropped T-Mobile. This call **(REDACTED)**[11] During the telephone call among other things, MONTES

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[6] Based on my training and experience I know **(REDACTED)** I also know that **(REDACTED)** and the other listed items are used to manufacture methamphetamine.

[7] Based on my training and experience, I know ephedrine is a chemical precursor used in the manufacturing of methamphetamine and that **(REDACTED)**.

[8] This meeting was not recorded or observed by law enforcement.

[9] This telephone call **(REDACTED)** and, it cannot be verified by toll records as the only known **(REDACTED)** for which we cannot obtain information about incoming calls.

[10] I believe, based on my training and experience and conversations I have had with agents who are experts in the area of methamphetamine manufacturing, **(REDACTED)** similar to previously seen containers containing **(REDACTED)** the **(REDACTED)** appears to be in it's original manufactured container.

[11] (REDACTED) MONTES (REDACTED) Moreover, (REDACTED)

(REDACTED)[12] (cocaine) available. MONTES **(REDACTED)**

MONTES' (REDACTED) Methamphetamine

27) **(REDACTED)**

a. At my direction **(REDACTED)**

b. I had the roll of film developing and photographs clearly depict a **(REDACTED)**

(REDACTED)

28) On June 30, 2005, I was notified by ICE agents that MONTES and a companion, identified as KING, were sent to secondary inspection by U.S. Customs and Border Protection (CBP) as they attempted to enter the U.S. at the Nogales, Arizona, Port of Entry (POE). MONTES and KING claimed to be:

a. Visiting Nogales, Sonora, Mexico for pleasure;

b. U.S. Citizens and provided California drivers license as identification;

c. Staying at the Best Western Hotel I Nogales, Arizona during their visit.

29) CBP agents made photocopies to S/A Salaiz to further the investigation. These items included receipts dated June 18, 2005, a business card from

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[12] I am aware that during the months of April and May 2005, the Mexican Federal Special Operations group were conducting aggressive law enforcement activities in Tijuana, Mexico which caused many drug trafficking operations to reduce their activities to avoid detection from the Mexican law enforcement authorities.

stores at The Mall at Millenia, located in Orlando Florida and two business cards for businesses in McCook and North Riverside, Illinois. I found these items to be significant **(REDACTED)** that MONTES travels to Illinois and Florida.[13] This information also **(REDACTED)** that MONTES was in Nogales (Arizona) negotiating a cocaine delivery through Nogales POE.

MONTES' (REDACTED)

30) **(REDACTED)**

MONTES' Trip to Southern Mexico

31) **(REDACTED)** MONTES **(REDACTED)** MONTES was on his way to Michoacan, Mexico **(REDACTED)**[14] Nogales ready and waiting for the shipment in Nogales, Sonora, Mexico.

32) **(REDACTED)**[15][16]

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[13] This information **(REDACTED)** MONTES travels to Illinois and Florida, however it does not substantiate the claims of MONTES **(REDACTED)** MONTES conducts narcotic trafficking in those areas. Therefore, the only means to gain the evidence needed to prosecute the Target Subjects for the Targeted Offenses is the use of a wiretap.

[14] This telephone call **(REDACTED)** it cannot be verified by toll records as the only known **(REDACTED)** and for which we cannot obtain information about incoming calls.

[15] MONTES often uses coded language and commonly refers to Chicago, as "los vientos", which, in Spanish literally means wind and is used as a code to describe Chicago, Illinois.

[16] Based on my training and experience, I know that large-scale drug traffickers often will have a courier drive their narcotic proceeds to their destination and leave the vehicle and narcotics at a predetermined location.

33) **(REDACTED)**[17][18]

34) **(REDACTED)**[19][20]

35) **(REDCATED)**[21]

36) **(REDCATED)**[22]

37) On **(REDCATED)** at approximately 3:00 p.m., I dialed (626) 392-0671[23] issued by T-Mobile, subscribed to Jaime Hernandez, address given 14234 Fairgrove La Puente, CA, 91744, ESN # 05510077079, (hereafter dropped Virgin Mobile) **(REDACTED)**

38) Approximately ten minutes later (on **(REDACTED)** Nextel direct connect communication from Target Telephone #1. The conversations were

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[17] A check with DMV records reveals the registered owner of the Tahoe is MONTES at 824 S. Lolita Street, West Covina, California

[18] This telephone call was not **(REDCATED)** and, it cannot be verified by toll records as the only known **(REDACTED)** and for which we cannot obtain information about incoming calls.

[19] I find this significant because, I believe that MONTES has established and operating clandestine methamphetamine laboratory, likely located in Chicago, Illinois and MONTES and arranges the transportation of the chemicals and laboratory equipment to Chicago for the purpose of manufacturing methamphetamine.

[20] It is the **(REDACTED)** belief, based on my training and experience that when **(REDACTED)** head of the Arellano-Felix Organization ("AFO"). It is common for head of DTO's to develop working relationship with members of the AFO and pay the AFO, so the DTO can work in the areas under their control (Tijuana, Mexico) without fear of retribution.

[21] On **(REDACTED)** MONTES **(REDACTED)**

[22] **(REDCATETD)** however, **(REDCATED)**

[23] **(REDCATED)** this cellular number is a phone used by MONTES to conduct narcotics trafficking, however we are currently not seeking authorization for interception of this device.

(REDCATED)[24] During the communications, MONTES **(REDACTED)**[25] methamphetamine **(REDACTED)** MONTES **(REDACTED)**[26]

39) Approximately fifteen minutes later, at approximately 3:30 p.m. **(REDACTED) Target Telephone #1**. This call was also **(REDACTED)** answered in the affirmative. MONTES **(REDACTED)** (methamphetamine **(REDACTED)** methamphetamine) **(REDCATED)**[27]

40) On **(REDACTED)** Telephone #1 **(REDACTED)** MONTES has always been very suspicious and distrusting while discussing narcotics trafficking over the phone. **(REDACTED)**[28]

41) Accordingly **(REDACTED)** in the morning hours of **(REDACTED)** MONTES.[29] MONTES **(REDACTED)**

42) On September 11, 2005 Juan Antonio ARELLANO (hereafter "ARELLANO") attempted to enter the United States from Mexico at the Nogales, Arizona Port of Entry (POE) driving a black BMW.

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[24] MONTES **(REDACTED)** MONTES **(REDACTED)**
[25] **(REDCATED)**
[26] **(REDACTED)**
[27] This call was not recorded
[28] MONTES was arrested by DEA in 1996 for violation of controlled substance act, conspiracy to distribute, possession of ephedrine with intent to manufacture methamphetamine.
[29] This call was not **(REDACTED)** by law enforcement and, due to the fact that the call was not received in the United States **(REDACTED)** we have not been able to determine which phone MONTES used to make this call.

ARELLANO was referred to the US Customs and Border protection (CBP) Secondary Inspection Area, CBO Inspectors preformed a thorough search of the vehicle and discovered approximately fifty (50) pounds of methamphetamine hidden in a non-factory built compartment behind the rear seat. ARELLANO waived him Miranda rights and agreed to speak to the ICE agents. ARRELLANO told agents he met a subject known to him as "El Guero" (believed to be MONTES) through another person in Guadalajara, Mexico two months ago. ARRELLANO said "El Guero" offered (ARRELANO) money to transport drugs from Guadalajara to California. ARELLANO told the agents that he was to be paid $10,000.00 for transporting the narcotics from Guadalajara Mexico to Fontana , California. ARELLANO said he had been instructed to call the dropped Virgin mobile[30] once he arrived in Fontana, CA. ARRELLANO told ICE agents that he had completed the smuggling of one other load of narcotics for the MDTO and had dropped off the load vehicle in the parking lot at his apartment complex in Fontana, California. ARELLANO said that when he called the dropped Virgin mobile, ARELLANO would speak to El Guero and a person he believed to be a black male. ARELLANO said, when he made his first delivery of the narcotics for the MDTO, he dropped off

[30] The dropped Virgin mobile ARELLANO was instructed to call is a cellular phone used by MONTES. **(REDACTED)**

the load vehicle at his apartment complex as instructed. A black male driving a Nissan Quest (believed to be Enjobul KING) picked up the load vehicle and drove to a location unknown to ARELLANO. ARELLANO said about a month, after the first load he was called by the Black Male (KING) and told of his second load. He was instructed by the Black male to pick up the vehicle at the Guadalajara airport parking lot. ARELLANO, his wife and two children flew to Guadalajara from LAX on Friday, September 9, 2005. The following morning Saturday, September 10, 2005 they picked up the load vehicle and they began their trip back to the U.S. Arellano said he was on his way to Fontana, CA until he was detained at Nogales, AZ POE. An ICE computer inquiry reveals that ARELLANO's BMW bearing California license plate number 5MBZ511 has crossed the Nogales POE on July 16, 2005, August 22, 2005 and September 11, 2005.

43) On September 11, 2005, ARELLANO agreed to call the dropped virgin Mobile phone and speak to El Guero (MONTES) or the Black male contact regarding the delivery of fifty pounds of methamphetamine. ARELLANO placed call to the dropped Virgin Mobile phone and spoke to a person ARELLANO believed to be El Guero. **(REDCATED)** agents believed El Guero to be MONTES. MONTES answered the telephone and became suspicious of ARELLANO. MONTES

immediately questioned ARELLANO as to his location, the amount of time it had taken him to cross the border from Mexico into the United States and his delay in calling him (MONTES). After ARELLANO made the call to MONTES, the attempted controlled delivery was halted at S/A Salaiz' request. According to ARELLANO, ARELLANO has met El Guero (MONTES) and the Black male (KING) only once and does not know any other members of the MDTO. I believe this to be very unlikely, as members of large DTO's don't normally trust unknown or unproven smugglers to deliver such large quantity of narcotics, as in this instance, fifty pounds of methamphetamine. I further believe, if the controlled delivery was to occur, the vehicle containing the methamphetamine would likely have been picked up by an unknown member of the DTO and an arrest of this individual, would not allow us to achieve the goals of this investigation.

44) On **(REDACTED)** MONTES' **(REDACTED)** (hereafter Virgin Mobile 1). He **(REDACTED)**

45) On **(REDACTED)**[31]

Recent communications (REDACTED) MONTES (REDACTED)

46) On **(REDACTED)**[32]

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[31] This phone call was not **(REDACTED)** but **Target Telephone #2** toll information corroborate the call placed from MONTES **(REDACTED)**

47) **(REDACTED)**[33] **Target Telephone #1. (REDACTED)**[34]

48) At approximately **(REDACTED)** Virgin Mobile #1. MONTES answered Virgin Mobile #1 **(REDACTED)** (Target Telephone #2) **(REDACTED)**

49) Approximately thirty seconds later MONTES **(REDACTED)** Target Telephone #2. The phone conversation was **(REDACTED)** Target Telephone #2 **(REDACTED)**[35] was no answer. MONTES replied **(REDACTED)** Telephone # 2 **(REDACTED)**[36] customer) pays up front. MONTES **(REDACTED)** to be Chicago, IL). **(REDACTED)**

50) **(REDACTED)**[37]

51) On **(REDACTED)** Target Telephone #1. **(REDACTED)**[38]

52) **(REDACTED)** Target Telephone #1 **(REDACTED)** delivered. **(REDACTED)**

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[32] MONTES had previously **(REDACTED)**

[33] Although call **(REDCATED)** review of call records from **Target Telephone #2** revealed Target Telephone **(REDACTED)**

[34] I originally believed MONTES was referring to Chicago, IL **(REDACTED)** I later learned MONTES was referring to Washington State.

[35] **(REDACTED)**

[36] **(REDACTED)**

[37] I believe MONTES uses Ls Angeles as his central receiving and distribution location for all of his narcotics activity. I believe MONTES has established clients in the Los Angeles area and from there he has established a distribution network to other eastern cities.

[38] Based on my training and experience, **(REDCATED)**

53) On **(REDACTED)** MONTES **(REDACTED)** Target Telephone #1 and **(REDACTED)**

54) On **(REDCATED)** MONTES **(REDACTED)** Target Telephone #1 three separate times. MONTES **(REDACTED)** (MONTES) **(REDACTED)** MONTES **(REDACTED)** MONTES **(REDACTED)** some of these **(REDACTED)**

TOLL ANALYSIS FOR THE TARGET TELEPHONES

55) I have conducted an analysis of toll information for Target Telephone #1 and Target Telephone #2. Based upon my review of the calls made from Target Telephone #1 and Target Telephone #2, I believe that MONTES and other Target Subjects are using **Target Telephone #1** and **Target Telephone #2** to contact coconspirators in furtherance of the Target offenses.

56) During this investigation I have learned **(REDACTED)** MONTES simultaneously uses several different cellular phones to conduct his illegal drug trafficking activities, in an attempt to thwart law enforcement efforts in obtaining the needed evidence to arrest MONTES. Because ARELLANO was arrested on September 11, 2005 and ICE made the recorded telephone call to MONTES over the dropped Virgin mobile phone, I believe MONTES an other Target Subjects have discontinued the use of the dropped Virgin Mobile phone and began utilizing

Target Telephone #1 and Target Telephone #2 to continue their drug trafficking activities.

57) Between October 19, 2005 and October 23, 2005 Target Telephone #1 placed and/or received twelve phone calls from and /or to 509 area code numbers, which are located in Washington State. According to consensual monitored recorded phone calls to MONTES (see page 27 paragraph 49) MONTES was in Washington State during this time. MONTES had numerous conversations **(REDACTED)** I believe MONTES was manufacturing methamphetamine during this time, and thus the urgency to get the **(REDACTED)** believe MONTES was using Target Telephone #1 to contact other co-conspirators in Washington State.

58) Between October 14 and October 17, Target Telephone #1 placed and/and or received 7 calls from and/or to phone number (562) 307-9605 a Norwalk, California telephone number with the most recent phone call made on October 17, 2004. The dropped Virgin Mobile called the same number on a least 3 occasions.

59) My belief is further substantiated by the following toll analysis comparison between the dropped Virgin Mobile phone and Target Telephone #2.

Common numbers called	**Dropped Virgin Mobile Phone**	**Target Telephone #2**
(509)438-4825 Washington	(2 Calls) From 07/18/05 to 09/17/05	(1 call) From 10/11/05 to 10/21/05
(509) 952-4410 Washington	(20 Calls) From 07/18/05 to 09/17/05	(6 calls) From 10/11/05 to 10/21/05
(509) 969-1034 Washington	(9 Calls) From 07/18/05 to 09/17/05	(3 calls) From 10/11/05 to 10/21/05
(562) 307-9605 Norwalk, CA	(3 Calls) From 07/18/05 to 09/17/05	(3 calls) From 10/11/05 to 10/21/05
(915) 443-9168 El Paso, Texas	(2 Calls) From 07/18/05 to 09/17/05	(9 calls) From 10/11/05 to 10/21/05
(773) 727- 0613 Chicago, Illinois	(1 Calls) From 07/18/05 to 09/17/05	(3 calls) From 10/11/05 to 10/21/05
(626) 201-4138 Los Angeles, CA	(9 Calls) From 07/18/05 to 09/17/05	(2 calls) From 10/11/05 to 10/21/05

60) Although the above calls tabled above do not indicate who MONTES was speaking to during these calls, I believe the common call pattern depicted above substantiates my belief that MONTES is currently using Target Telephone #2, in lieu of the dropped Virgin Mobile phone to contact other co-conspirators to continue his drug trafficking activities. **(REDACTED)** indicated that MONTES conducts his narcotic trafficking to unknown individuals in **(REDACTED)**. The above listed table indicates that MONTES uses Target Telephone #2 to contact individuals in those states.

61) Between October 12m 2005 and October 21, 2005, Target Telephone #2 placed and/or received a total of 26 calls to/from (678) 548-2192, an Atlanta , Georgia telephone number, with the most recent occurring on October 21, 2005. Based **(REDACTED)** information and consensually monitored calls I believe that part of the MDTO operates in Atlanta, Moreover, it should be noted that during the **(REDACTED)** MONTES **(REDACTED)**

62) Between October 12, 2005 and October 21, 2005, Target Telephone #2 placed and/or received a total of 20 calls to. from 011523123117486. a Coilma, Mexico telephone number, with the most recent occurring on October 21, 2005. Based **(REDACTED)** information **(REDACTED)** monitored calls, I believe that to be part of the MDTO operated in Colima,

Mexico area that is an adjacent state to Michoacan, Mexico.

63) Between October 12, 2005 and October 21, 2005, Target Telephone #2 placed and/or received a total of 2 calls to/from 2133201934, the Mexican phone number utilized by CABALLERO. The most recent call between Target Telephone #2 and 3123201934 was on October 21, 2005. **(REDACTED)** I believe they these toll records show communications between MONTES and CABALLERO. Moreover, based on the **(REDACTED)** it is likely that the conversations they have with each other are related to the Target Offenses.

64) Between October 12, 2005 and October 21, 2005, Target Telephone #2 placed and/or received a total of 18 calls to/from (630) 532-1233, an Elmhurst Illinois telephone number, with the most recent occurring on October 16, 2005 and October 21, 2005, Target Telephone #2 place and/or received 17 calls to/and from (773) 355-6155, a Chicago Illinois telephone number, with the most recent call occurring on October 21, 2005. Based on **(REDACTED)** information and consensually monitored calls I believe that part of the MDTO operates in Chicago. Moreover, it should be noted that in the August 10, 2005 monitored calls **(REDACTED)** and the later, **(REDACTED)** Target Telephone #2 called this same Chicago number.

65) Between October 13, 2005 and October 17, 2005, **Target Telephone #2** placed and/or received a total of 9 calls to/from (915) 443-9168, a Texas telephone number, with the most recent occurring on October 17, 2005. Based on **(REDACTED)** information and consensually monitored calls I believe that part of the MDTO operates in Texas utilizing an unknown POE as a smuggling point from Mexico into the United State.

66) Between October 13, 2005 and October 21, 2005, Target Telephone #2 placed and/or received a total of 9 calls to/from (509) 901-0326, a Washington telephone number, with the most recent occurring on October 21, 2005. Based on **(REDACTED)** information and consensually monitored calls I believe that part of the MDTO is currently manufacturing methamphetamine in a clandestine methamphetamine laboratory in an unknown location in the state of Washington.

67) Between October 11, 2005 and October 16, 2005, MONTES placed and/or received 182 phone calls from Target Telephone #2 to/from phone numbers in Illinois, Washington, Texas, Georgia, Mexico, and Los Angeles from cell sites in the Los Angeles area. Between October 17, 2005 and October 21, 2005 MONTES placed/and or received 123 phone calls from Target Telephone #2 to/and from phone numbers in

llanos, Washington, Texas, Georgia, Mexico, and Los Angeles from cell sites in the Washington State area.

NEED FOR INTERCEPTION

68) Interception of wire communication to and from Target Telephone #1 and Target telephone #2 will enable the government to fully achieve the objectives of this investigation, namely, to obtain direct evidence that will convince a jury beyond a reasonable doubt of the following:

a. The full scope, extent, methods of operation, and personnel of the cocaine and methamphetamine trafficking conspiracy involving the target subjects in areas and throughout the United States and Mexico;

b. The identity and role of the main distributors and customers of the identified conspirators;

c. The dates, times, and places for commissions of activities related to the distribution of cocaine and other controlled substances;

d. The location of the operating clandestine methamphetamine laboratory;

f. The location, receipt, administration, control, management, and disposition of controlled substances as well as proceeds obtained from the distribution of these substances.

69) Specifically, among other things, during the requested period of interception, I hope to learn:

a. Whether Target Telephone #1 and Target Telephone #2 are MONTES primary drug trafficking telephones. I also hope to determine whether he uses his telephones in a compartmentalized manner (suppliers on one telephone; distributors on another phone; money couriers on a third) or randomly (call number one of the day on telephone; call number two on the second, etc.) By beginning with interception of Target Telephone #1 and Target Telephone #2 I hope to gain a better understanding of how MONTES used telephones in order to further the objects (which I believe to be the Target offenses) of the MDTO;

b. Who MONTES' suppliers are including:

1. Who his Mexican cocaine supplier is; and

2. Who his connection/supplier in Atlanta is; and

3, Who is Canadian supplier of Ephedrine is; and

4. Who his supplier of other chemicals/equipment used in making methamphetamine is.

c. What the MDTO's connection to other drug cartels is (See page 18 paragraph 34);

d. Where MONTES has his stash house(s);

f. Who the different actors are in the MDTO are (including the distributors in Los Angeles,

California, Illinois, Georgia, Arizona, Texas and Florida) and how MONTES uses his trucking business to conceal and deliver the cocaine and methamphetamine; and

g. Whether and where MONTES is operating his methamphetamine laboratories, so surveillance can be coordinated with wire interceptions to accomplish the goals of this investigation. In the alternative, if MONTES is contracting the manufacturer of the methamphetamine out, I would like to determine with whom he has such a contract.

70) I also believe the interception of wire communications to and from the Target Telephone #1 and Target Telephone #2 is necessary in this matter because normal investigative techniques have been tried and have failed to fully achieve the complete objectives of this investigation, or appear reasonably unlikely to succeed if tried, or are too dangerous to be tried, as more fully explained below.

71) Based upon my training, experience, information **(REDACTED)** and knowledge of this investigation, I believe MONTES facilitates large shipments of narcotics into Los Angels and West Covina, California; Chicago, Illinois; Atlanta, Georgia; and Miami, Florida. Based on tolls, I believe MONTES used Target Telephone #1 and Target Telephone #2 I hope to identify the domestic and international scope

of MONTES' distribution and transportation network. For example, it appeared fro the prior **(REDACTED)** that MONTES had the ability to delivery a substantial amount of cocaine **(REDACTED)** MONTES **(REDACTED)** his associates.

72) I believe the interception of wire communications to and from Target Telephone #1 and Target Telephone #2 is necessary because MONTES' narcotics trafficking organization appears to be receiving narcotics from other narcotics organizations and one of the objects of the investigation will be to determine the suppliers for the MDTO. I also believe MONTES' distribution of drugs is expansive over several states in the Unite States and MONTES needs to and uses Target Telephone #1 and Target Telephone #2 and probably other telecommunication devices to coordinate the manufacturing process of methamphetamine, the delivery of chemicals and needed equipment for the manufacturing process, the distribution of drugs and the coordination of proceeds from the sale of narcotics to be transported to Mexico. Further, I believe interception of uses Target Telephone #1 and Target Telephone #2 is necessary to prove to a jury that each Target Subject was involved beyond a reasonable doubt.

73) The following is a list of the investigative techniques which have been used or which I have considered using to date in this investigation and an

explanation concerning why these techniques are not likely to succeed in the identifying the full scope of this conspiracy.

74) As described above, while acting in an undercover capacity (REDACR+TED) This investigation technique failed, however, because MONTES **(REDACTED)** Because of MONTES **(REDACTED)** For example, it is dangerous for an **(REDACTED)**. It is also possible that the operation would be compromised by Mexican law enforcement agents who are often bribed by DTO's moreover, both BNE and ICE policies prohibit such a venture.

75) After it became (REDACTED_

76) Finally, I believe that the undercover investigation may have **(REDACTED)** of the investigation. **(REDACTED)**

77) **(REDACTED)**

a. **(REDACTED)**

b. **(REDACTED)**

c. **(REDACTED)** MONTES.

78) It is my belief, that members of DTO's often compartmentalize the information regarding their drug trafficking activities to avoid the impact and possible loss if someone **(REDACTED)**

79) Additionally, there is some reason to believe that MONTES **(REDACTED)**

80) Furthermore, I know based on my training and experience that higher ranking members of drug trafficking organizations such as MONTES, who distribute large amounts of controlled substance generally deal only with people who are well known and trusted by the organization. Therefore, law enforcement's chance of penetrating the organization busing a UCA and/or a CS into the organization to obtain more detailed information and evidence about the organization id not likely. The goal of this investigation is to obtain information that leads to the arrest of the entire DTO and the individuals they service. Therefore, based on the above **(REDACTED)**

81) Pen registers, trap and trace devices and toll records analysis simply identifies the number of telephones that is calling the Target Telephone or the numbers the Target Telephone has called. Pen registers, trap and trace devices, and toll analysis has been a valuable investigation tool because it has tended to corroborate information **(REDACTED)** provided me. Moreover, given that I believe that MONTES uses a number of telephones, toll analysis has helped us to determine that, at this point it appears that Target Telephone #1 and Target Telephone #2 would be a good phone to intercept as it is calling other cities and Canada **(REDACTED)** has mentioned are within the MDTO network. However,

this corroboration, while helpful, will not enable the government to achieve the goals of this investigation.

82) In this case, I have attempted to use toll records. These tells records give me probable cause to believe that Target telephone #1 and Target Telephone #2 is being used by MONTES to facilitate the Target offenses, however, they do not provide that the Target Offenses are being committed by the Target Subjects beyond a reasonable doubt. For example, as stated above, toll records **(REDACTED)** However, **(REDACTED)** Thus, **(REDACTED)** the toll records, alone or even **(REDACTED)** are merely indications of calls (probably to cellular telephones which can actually be located anywhere in the Northern Hemisphere) with certain area codes. This does not fulfill the goal of identifying members of the MDTO or determining their roles.

83) Similarly, tolls for Target Telephone #1 and Target Telephone #2 show calls to Los Angeles, California, Illinois, Georgia, and Texas. AT this point I have information that the MDTO is engaged in the Target Offenses in those states. However, because I know that MONTES uses Target Telephone #1 and Target Telephone #2 to conduct drug trafficking **(REDACTED)** and because I believe MONTES uses it to conduct drug trafficking with the users of the telephones mentioned above, I suspect that the calls between Target Telephone #1 and Target Telephone

#2 and Los Angeles, California, Illinois, Georgia and Texas are also drug related. However, without more, I cannot say for sure what these calls are about.

84) Further, Target telephone #1, is a prepaid Nextel Mobile phone subscribed to Raul Sanches, PO Box 54988, Irvine, CA, 92619-4988. Investigators have checked investigative databases and have been unable to locate or identify Raul Sanchez or verify the subscribers address.

85) Target Telephone #2, is a prepaid Virgin Mobile phone subscribed to Delvino Dia, 2167 Siesta Avenue, La Puente, CA. Investigators have checked investigative database and have been unable to locate or identify Delvino Dia or verify subscriber address.

As to tolls, it should be noted that many telephone companies are taking months to respond to a subpoena, so that toll analysis is a process fraught with delay. I have personally experienced telephone companies misplacing a subpoena, creating a delay and need for re-submission of the subpoena as well as partial returns of information, when the response excluded a requested phone number or days that were actually requested.

86) Thus, the information received based on toll records, had not been helpful in accomplishing the goals of this investigation, as it neither identifies the users no the content of the conversations.

(REDACTED) CORDINGS

88) **(REDACTED)** MONTES. Then, during the evening hours of **(REDACTED)** MONTES that was **(REDACTED)** MONTES was referring to **(REDACTED)** Target Telephone #1 earlier in the day. It is my opinion that MONTES **(REDACTED)**

89) **(REDACTED)**

PHYSICAL SURVEILLANCE

Recent Surveillance Operations

90) On October 11, 2005 BNE agents conducted a surveillance of MONTES' residence 824 S. Lolita Street, West Covina, California. No activity was observed however MONTES' vehicle a 2004 Chevy Tahoe, California 5KLU297 known to be MONTES' primary vehicle was parked in the driveway.

91) On August 19, 2005 and September 06, 2006 BNE agents conducted surveillance of MONTES' residence 824 S. Lolita Street, West Covina, California. No activity was observed during these surveillances.

92) Traffic on the street is very minimal and if surveillance agents were to park on the street to observe the residence for a long period of time, the neighbors of the street would likely notice it. It has been my experience, the people living on small streets will often notice an unfamiliar vehicle parked on the street in front of one their residences. It has further been my experience that residents who notice a person

sitting in a vehicle in their neighborhood will either make contact with agent in his car, or call the local police and report a suspicious occupied vehicle. Either situation draws attention to the agent in his vehicle conducting surveillance and would likely compromise the investigation. For these reasons, I believe further surveillance would not be practical at this location.

PREVIOUS SURVEILLANCE OPERATIONS

93) On March 15, 2005, agents from BNE and ICE San Diego, conducted surveillance of MONTES' residence, located at 824 S. Lolita Street, West Covina, California. The agents the residence is a single family detached house and the residence is located on the southeast corner of Lolita Street and East Del Cerro Avenue. Agents observed MONTES driving a 2004 Chevrolet Tahoe, bearing California license plate 5KLU297, registered to Steven MONTES 824 S. Lolita Street, West Covina, California, arrive at the residence and park inside of the garage. An unidentified Hispanic Female Adult ("HFA") was sitting in the passenger sear of the Tahoe. The garage door was closed and both subjects entered the residence. No further activity was observed during the surveillance.

94) If wire interception is approved, surveillance will be continued to corroborate information intercepted in wire communications. Without the aid of intercepted communications, it would be very

difficult for surveillance team members to determine if MONTES or any other Target Subjects are engaged in legitimate activities or narcotics transactions. Moreover, due to limitations inherent in remaining unseen by subjects of the investigation, physical surveillance often fails to provide sufficient evidence in order to prove the identities of those persons observed or the purpose of the activities taking place.

95) Furthermore, it is often very difficult to effectively conduct surveillance of significant drug traffickers in particular over the course of lengthy investigation without being detected since they are likely to employ more sophisticated methods in the course of their criminal enterprise, such as the use of counter-surveillance techniques, in an effort to detect law enforcement scrutiny. Based on my training and experience, I believe that physical surveillance, without the aid of intercepted communications will not achieve the objectives of this investigation. Surveillance is an investigative technique that has been (and will continue to be) used to confirm meetings and other suspected activities between alleged participants. However, without intercepted conversations, surveillance alone often leaves the investigators with insufficient evidence to prove the purpose of the meetings and other activities.

INTERVIEWS, GRAND JURY SUBPOENAS, AND GRANTS OF IMMUNITY

96) As previously describe, ARELLANO was arrested on September 11, 2005 while attempting to smuggle fifty pounds of methamphetamine into the United States from Mexico, through the Nogales, POE. ARELLANO claimed little knowledge of the members of MDTO and I believe if he were brought to the Grand Jury, he would continue to claim not to know the members involved in the MDTO or would likely invoke his Fifth Amendment rights. This method would not allow us to achieve the goals of this investigation. No other Target Subjects of this investigation have been arrested and therefore no interviews have been conducted.

97) **(REDACTED)**

98) Based on my training and experience, I believe that interviews of the Targets Subjects of the investigation would produce insufficient information to fully achieve the objectives of this investigation. Any responses in the interviews would likely contain a significant number of untruths, diverting the investigation with false leads or otherwise frustrating the investigation. The interviews would also have the effect of alerting the members of the conspiracy, thereby compromising the investigation and resulting in the possible destruction or concealment of

documents and other evidence and the possible flight of Target Subjects.

99) Based on my training and experience, I believe interviews of any member of this organization would not be successful regarding this type of criminal activity because the only persons knowledgeable about the content of the conversations or transactions are the parties who are the direct participants and who, are they themselves the Target Subjects. Based on my training and experience, I know that interviews with drug dealers and their customers are generally not productive because of an individual's fear of their physical safety, because of their own culpability, or because of a sense of loyalty to their co-conspirators. Based on my training and experience, I think it is highly unlikely that any member of the organization would provide useful information to interviewing agents. Based on my training and experience, I do not believe a Grand Jury Investigation would be successful for the following reasons:

a. Subjects of investigation, should they be called to testify, would most likely invoke their Fifth Amendment privileges.

b. It would be unwise to seek Grand Jury immunity for any of these subjects herein as it might foreclose prosecution of the most culpable persons.

c. Most of the individuals who have been identified in this investigation as known as having

participated in various forms of illegal activities and would, in my opinion, be likely to lie under oath unless confronted with facts that would force them to tell the truth. At this time, such facts are not available to the government; therefore, a Grand Jury Investigation with grants of immunity appears unlikely to succeed.

TRASH SEARCHES

100) Based on my previous experience investigating high-level drug traffickers, I have found that they go to great lengths to destroy possible incriminating evidence and frequently will not use their residential trash containers to dispose of valuable information. Furthermore, any attempts to conduct trash searched at MONTES' residence would risk exposing the presence of law enforcement because MONTES lives on a quiet cull-d-sac street. It has been my experience that neighbors will become aware of strangers in their neighborhood and would likely call the local police if we ere to attempt to remove MONTES trash from the front of his residence. Moreover, the neighbors may alert MONTES that someone (law enforcement) was removing his trash from the front of his residence and MONTES would likely detect law enforcement's investigation.

101) At this time, I do not believe that trash searches, even in conjunction with conventional methods of investigation, will achieve the goals of this investigation. If conversations are intercepted

concerning certain locations, agents will be able to evaluate their significance, and trash searches may be conducted at that time.

FINANCIAL INVESTIGATION

102) At this stage of the investigation, I have not yet obtained any of the Target Subjects tax returns or credit reports, but may try to obtain them later. While obtaining tax returns or credit reports may be helpful in tracing narcotic proceeds collected by the Target Subjects, it is highly unlikely that the information will lead to the identification of the Targets Subjects' source of controlled substance(s), transporters, financiers, distributors, couriers and/or customers. Based on my training and experience, I have found that it is common for cocaine traffickers to take their narcotics proceeds out of the country; therefore, to the extent this is true in this investigation, a U.S. based financial investigation will not be fruitful.

103) **(REDACTED)** MONTES uses tractor-trailer to transport the proceeds of narcotic sales from their origin into Mexico. I anticipate seizures of narcotic proceeds from this investigation and I know that drug dealers will often deny ownership of large sums of drug proceeds they are transporting, out of the belief that they will then, not be charged with drug trafficking, by law enforcement authorities seizing the excessive amount of money. Seizures of drug trafficking funds are only possible when one has prior

knowledge that a movement of money will occur. Further, in order to successfully arrest a guilty party, who transports drug trafficking funds, prior knowledge of the delivery has to be established. One way to accomplish this is through wiretap surveillance. This way, plans to pick up or deliver payments can be documented, and the funds context within a drug trafficking conspiracy, can be adequately established.

"MAIL COVER" REQUESTS

104) If I did know the residence was used for narcotics related activities, the information obtained by mail covers is valuable to this investigation in identifying individuals receiving mail at the suspected locations as well as those sending the mail. However, it does not provide information of the Target Subjects suspected criminal activity, only possible leads that will assist investigators in corroborating other information received in the course of investigation.

DURATION OF INTERCEPTION

105) The facts set forth in this affidavit establish that the principles described herein are engaged in a narcotics conspiracy and that the evidence sought will be intercepted on a continuing basis following the first receipt of the particular communications that are the subject of this request. Therefore, it is requested that the Court's Order for the interception need not terminate when the communications described herein

are first intercepted, but may continue until the full scope of the enterprise is developed, including the identities of all participants, their places and methods of operation, and the various activities in which they are engaged in furtherance of the enterprise, or for a period of thirty (30) days for Target Telephone #1 and Target Telephone #2 from the earlier of the day which the investigative or law enforcement officers begin to conduct an interception under the order.

106) I further request that the court order Nextel and Sprint Mobile and any other affected telecommunications company be ordered to cooperate with this wire intercept and related Dialed Number Recorder and "trap and trace" functions.

107) I further request that BNE execute such order, establishing an interception and listening post in County of Los Angeles, California.

108) I further respectfully request that the Court seal this Affidavit, the Chief Executive Review, The Application, any resulting Court Orders, and any Six (6) Day Progress Reports generated during the periods of interception, pursuant to *People v. Janet Marie Hobbs* (1994) 7 Cal.4th 948, and Evidence Code Sections 1040-42, If this information is revealed, it could compromise the sources of confidential information.

CONCLUSION

109) The facts contained in this affidavit show that there is probable cause to believe that the Target Subjects named herein, and others yet unknown are using the Target Telephone to commit the crimes of Criminal Conspiracy to possess with the intent to distribute a controlled substance, possession with intent to distribute, and distribution of controlled substances, Possession of controlled substance (cocaine) for sale, Transportation of controlled substance (cocaine), Possession of controlled substance (methamphetamine) for sale, Transportation of a controlled substance (methamphetamine), Possession of chemicals with the intent to manufacture methamphetamine, Manufacturing, compounding, importation, possession for sale, transportation and sale of a controlled substance, converting, producing a controlled substance, in violation of 182 P.C.; 11351 H&S; 11352 H&S; 11378 H&S; 11379 H&S; 11383 H&S; and 11397.6 H&S I further feel that an essential element of building a prosecutable case the Target Subjects is the interception of wire communications over the Target Telephones concerning those offenses will be obtained through electronic surveillance, authorization for which is requested herein. Normal investigative techniques have been tried and have failed, are reasonably unlikely to succeed, or are too dangerous to try. Accordingly, permission is hereby

requested to intercept wire communications to and from Target Telephone #1 and Target Telephone #2, as set forth above.

110) It is further requested that the authorization given be intended to apply not only to the Target Telephones listed above, but to change telephone number (s) subsequently assigned to the same IMSI/ESN/UFMI currently assigned to the Target Telephones and/or any subsequent IMSI(s)/ESN(s)/UFMI(s) that may be assigned to the same telephone number currently assigned to Target Telephone #1 and Target Telephone #2, within the thirty (30) day period. It is also requested that the authorization apply to background conversations intercepted in the vicinity of the Target Telephone #1 and Target Telephone #2 while the telephones are activated or otherwise in use.

DATED: 11/03/05

Signature of Javier Salaiz

Special Agent Javier Salaiz

DOJ/BNE

LAW OFFICES OF RICHARD G. NOVAK

959 East Colorado Blvd., Ste 1B

Pasadena, CA 91106-2337

May 31, 2006

Mr. Sean Carney

Deputy District Attorney

Major Narcotics Division

320 West Temple Street. Room 3-345

Los Angeles, CA 90012

RE: People v. Steven Montes, et al.

Case No. (BA302020-01)

Dear Mr. Carney,

The purpose of this letter is to follow-up on our discussion in court on May 24, 2006 concerning discovery in this matter. As you know, a significant portion of the evidence developed by law enforcement in this matter was derived from court-authorized interception of wire communications ("wiretaps") of cellular telephones. You have provided affidavits filed in support of applications for these wiretaps as follows:

1. Wiretap 05-198
2. Wiretap 05-210
3. Wiretap 05-215
4. Wiretap 05-220
5. Wiretap 06-25
6. Wiretap 06-47

Please let me know if there are any other wiretap applications or orders in addition to those

listed above. Also, I believe that the periodic reports required under Penal Code section 629.60 have not been provided to Mr. Montes. Please provide unredacted copies of these reports as soon as possible. If you do not intend to provide them, please inform me in writing with an explanation of your legal authority for withholding them.

As we discussed, the first wiretap application, 05-198, is dated November 1, 2005. The affidavit of BNE Special Agent Javier Salaiz, filed in support of that application, is dated November 3, 2005. We have not received any law enforcement reports that were either prepared prior to this application or describe investigations that occurred prior to this date. Nonetheless, Special Agent Salaiz states in paragraph 5 of his affidavit that he and other agents participated in investigations prior to that date and that there are "reports" of investigations by other agents.

As I also pointed-out to you, significant portions of this and other affidavits are redacted. It is my opinion that the redactions are so broad that it is impossible to evaluate Special Agent Salaiz' claims that there was probable cause to justify the wiretap application and that the wiretap was necessary in order to accomplish the stated goals of the investigation.

Please provide me as soon as possible with copies of all law enforcement reports related to this

investigation that pre-date the first wiretap application, as well as any reports, regardless of date, that describe investigative activities that pre-date the first wiretap application. Please also provide me with unredacted copies of all affidavits filed in this investigation. If you do not intend to provide them, please inform me in writing with an explanation of your legal authority for withholding them.

Finally, it is my understanding that during the execution of the search of Mr. Montes' residence, one or more boxes of financial records were taken from the garage. As counsel for Mr. Montes in the concurrently-filed forfeiture action, I need access to these documents as soon as possible. Please contact me to discuss whether these documents will be held as evidence in the criminal proceeding or if they can be released back to Mr. Montes. If they cannot be released, then we need access to them so we can determine which documents need to be copied and we need to arrange for a copy service to copy them for us.

Thank you for your cooperation in this matter.

Very truly yours,

Signature of Richard Novak

Richard G. Novak

LOS ANGELES COUNTY DISTRICT
ATTORNEY'S OFFICE
Bureau of Specialized Prosecutions
Major Narcotics Division

STEVE COOLEY • District Attorney
JOHN K. SPILLANE • Chief Deputy D.A.
CURTIS A. HAZELL • Assistant D.A.

June 28, 2006

Richard G. Novak, Esq.
959 E. Colorado Blvd., Suite 1B
Pasadena, CA 91106-2337

RE: People v. Montes, et al. BA302020

Dear Mr. Novak,

This letter is to respond to your May 31, 2006 letter requesting discovery. As you note in your letter the People have provided applications and orders for several wiretaps. The only one not referenced in your letter is Wiretap No. 05-220 Extension #1. The application and order for this wiretap were also included in the discovery provided to you. Please let me know if you do not have them. There were no other wiretaps used in this investigation other than the ones mentioned in your letter and wiretap No. 05/220 Extension #1.

The People will not provide unredacted copies of the affidavits in support of the wiretap applications. The redacted portions of the affidavit were ordered

sealed by Judge Fidler to implement the privilege contained in Evidence Code section 1040 through 1042 and People v. Hobbs (1994) 7 Cal.4th 948.
Furthermore, the redacted portions of the affidavits are being withheld from discovery pursuant to sections 629.70(d) and 1054.7 of the California Penal Code.

I have enclosed with this letter copies of the periodic reports filed with the Court for the wiretaps used in this investigation. The attachments for the following reports are being withheld to implement the privilege in Evidence Code section 1040 through 1042, and People v. Hobbs (1994) 7 Cal.4th 948, and pursuant to Penal Code section 1054.7.
Wiretap No. 05-198 Report No. 2.
Wiretap No. 05-220 Report Nos. 4 and 5.
Wiretap No. 05-220 Ext. #1 Report Nos. 1, 2, 3.
Wiretap No. 06-47 Report Nos. 1, 2, 3, 4.

Furthermore, although the People have provided the periodic reports it is our belief that neither the Penal Code section 629.7 nor 1054 actually compel their production.

I have also enclosed with this letter all California Department of justice, Bureau of Narcotics Enforcement (BNE) reports related to this investigation with the following exceptions:

1) Report Nos. 1 through 5 (inclusive) and Report N. 23 are being withheld to

implement the privilege under Evidence Code section 1040 through 1042, and pursuant to Penal Code section 1054.7.

2) Report Nos. 19, 34, and 54 are not included with this letter but will be provided to you shortly.

To my knowledge there are no reports from any other law enforcement agencies (other than BNE) relating to this investigation that predate November 1, 2005 or that describe activities that took place prior to November 1, 2005. I will double check with BNE to make sure this is true.

Special Agent Salaiz recently provided me with copies of paperwork seized by the drug Enforcement Administration in Illinois as well as CD's containing photographs of evidence and surveillance. There are additional video and photographs that were taken during the surveillance that are referenced in the BNE reports. These materials are being copied by BNE and I hope to receive them in a week. I will provide them to you as soon as they are available.

Finally, based on our conversation in court I am awaiting further instructions from you before acting on your request to access or copy any financial records seized from Mr. Montes' residence. It is my understanding that at this time

BNE is holding these documents as evidence in the criminal case.

If you have any questions please call me at (213) 974-6817

Sincerely,

Signature of Sean M. Carney

Sean M. Carney
Deputy District Attorney
Major Narcotics Division`

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

Investigation Title	Date	Number
MONTES	05/12/2005	SD2005-00044

Report No.	Type	Case X-Ref.
1	OPENING REPORT	

Case Agent	Reporting agent	Supervisor
SALAIZ, J.	SALAIZ, J.	ROBERTS, P.

SUMMARY

(FULLY REDACTED)

DETAILS OF THE INVESTIGATION

(FIRST PORTION OF PAGE REDACTED)

I had previously identified and conducted a criminal records check on MONTES. MONTES was arrested in 1996 by the drug Enforcement Administration (DEA) San Diego, under the charge of Conspiracy to posses ephedrine with the intention of manufacturing methamphetamine. MONTES was in Federal Custody at Lompoc for 18 months. MONTES was then on Federal probation until 02/02/2001.

(REMAINDER OF PAGE REDACTED)

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

CONTINUATION

Investigation Title: MONTES
Investigation No. SD2005-00044

(ENTIRE PAGE IS FULLY REDACTED)

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

CONTINUATION

Investigation Title: MONTES
Investigation No. SD2005-00044
(REDACTED)
(REDACTED)

(REDACTED)...ave discussed these investigative objectives with Special Agent Supervisor (SAS) Paul **(REDACTED)** and he concurs.

INVESTIGATION CONTINUING
PHYSICAL DESCRIPTIONS:

1. MONTES, Steven, WMA,
   DOB-08/11/1973, 5'11" 175 lbs,
   HAIR-BLK, EYE-BRO
   DL-B8407812 CA
   SSN-615346952
   CII-UNK
   SID-UNK
   FBI-97219AB3
   SMT-CSAR, HAND, RIGHT
2. MONTES, Miguel, WMA,
   DOB-unknown, 5'11" 200 lbs,
   HAIR-BLK, EYE-BRO
   DL-UNK
   SSN-UNK
   CII-UNK
   SID-UNK
   FBI-97219AB3
   SMT-CSAR, HAND, RIGHT

VEHICLES:
NONE

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

CONTINUATION

Investigation Title: MONTES
Investigation No. SD2005-00044

LOCATIONS:

1. 824 LOLITA STREET, WEST COVINA,
   LOS ANGELES COUNTY, CA 91791-0000

TYPE-RESIDENCE
DDRESS OF RECORD-MONTES, Steven

(REMAINDER OF PAGE FULLY REDACTED)

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

CONTINUATION

Investigation Title: MONTES
Investigation No. SD2005-00044

(ENTIRE PAGE IS FULLY REDACTED)

Signature 05/12/05
Reporting Agent
SALAIZ, JAVIER

Signature 05/12/05
Special Agent Supervisor
ROBERTS, PAUL

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

Investigation Title	Date	Number
MONTES	07/14/2005	SD2005-00044

Report No.	Type	Case X-Ref.
2	PROGRESS REPORT	

Case Agent	Reporting agent	Supervisor
SALAIZ, J.	SALAIZ, J.	ROBERTS, P.

SUMMARY

(FULLY REDACTED)

Investigation is continuing

DETAILS OF THE INVESTIGATION

(FULLY REDACTED)

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

CONTINUATION

Investigation Title: MONTES
Investigation No. SD2005-00044

(ENTIRE SECTION IS FULLY REDACTED)

Investigation is continuing

PHYSICAL DESCRIPTIONS:

3. KING, Enjobul, BMA,
DOB-01/13/1973, 5'11" 180 lbs,
HAIR-BLK, EYE-BRO
DL-B3715600 CA
SSN-559413266
CII-A10221523
SID-UNK

Investigation Title: MONTES
Investigation No. SD2005-00044

FBI-171308TA8
SMT-NONE

4. MONTES, Miguel, WMA,
DOB-unknown, 5'11" 200 lbs,
HAIR-BLK, EYE-BRO
DL-UNK
SSN-UNK
CII-UNK
SID-UNK
FBI-97219AB3
SMT-NONE

5. MONTES, Steven, WMA,
DOB-08/11/1973, 5'11" 175 lbs,
HAIR-BLK, EYE-BRO
DL-B8407812 CA
SSN-615346952
CII-UNK
SID-UNK
FBI-97219AB3
SMT-CSAR, HAND, RIGHT

(REDACTED)

LOCATIONS:

2. 824 LOLITA STREET, WEST COVINA,
LOS ANGELES COUNTY, CA 91791-0000
TYPE-RESIDENCE
DDRESS OF RECORD-MONTES, Steven

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

CONTINUATION

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Signature 07/27/05
Reporting Agent
SALAIZ, JAVIER

Signature 07/27/05
Special Agent Supervisor
ROBERTS, PAUL

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

Investigation Title	Date	Number
MONTES	08/11/2005	SD2005-00044

Report No.	Type	Case X-Ref.
3	PROGRESS REPORT	

Case Agent	Reporting agent	Supervisor
SALAIZ, J.	SALAIZ, J.	ROBERTS, P.

SUMMARY

(FULLY REDACTED)

DETAILS OF THE INVESTIGATION

(FULLY REDACTED)

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

CONTINUATION

Investigation Title: MONTES
Investigation No. SD2005-00044

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STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

CONTINUATION

Investigation Title: MONTES
Investigation No. SD2005-00044

(SECTION IS FULLY REDACTED)

2. MONTES, Michael, WMA,
DOB-00/00/1967, 5'11" 200 lbs,
HAIR-BLK, EYE-BRO
DL-UNK
SSN-UNK
CII-UNK
SID-UNK
FBI-UNK
SMT-NONE

3. MONTES, Steven, WMA,
DOB-08/11/1973, 5'11" 175 lbs,
HAIR-BLK, EYE-BRO
DL-B8407812 CA
SSN-615346952
CII-UNK
SID-UNK
FBI-97219AB3
SMT-CSAR, HAND, RIGHT

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STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

CONTINUATION

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Signature 08/11/05	*Signature 08/11/05*
Reporting Agent	Special Agent Supervisor
SALAIZ, JAVIER	ROBERTS, PAUL

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

Investigation Title	Date	Number
OPERATION MICHO	09/27/2005	SD2005-00044

Report No.	Type	Case X-Ref.
4	PROGRESS REPORT	

Case Agent	Reporting agent	Supervisor
SALAIZ, J.	SALAIZ, J.	AGUIRRE, R.

SUMMARY

(FULLY REDACTED)

Investigation is continuing.

DETAILS OF THE INVESTIGATION

(FULLY REDACTED)

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

CONTINUATION

Investigation Title: OPERATION MICHO
Investigation No. SD2005-00044

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STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

CONTINUATION

Investigation Title: OPERATION MICHO
Investigation No. SD2005-00044

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STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

CONTINUATION

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Signature 11/25/05	*Signature 11/25/05*
Reporting Agent	Special Agent Supervisor
SALAIZ, JAVIER	AGUIRRE, ROBERT L.

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

Investigation Title	Date	Number
OPERATION MICHO	10/26/2005	SD2005-00044

Report No.	Type	Case X-Ref.
5	PROGRESS REPORT	

Case Agent	Reporting agent	Supervisor
SALAIZ, J.	SALAIZ, J.	AGUIRRE, R.

SUMMARY

(FULLY REDACTED)

Investigation is continuing.

DETAILS OF THE INVESTIGATION

(FULLY REDACTED)

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

CONTINUATION

Investigation Title: OPERATION MICHO
Investigation No. SD2005-00044

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STATE OF CALIFORNIA

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BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

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Investigation Title: OPERATION MICHO
Investigation No. SD2005-00044

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STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

CONTINUATION

Investigation Title: OPERATION MICHO
Investigation No. SD2005-00044

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This investigation is continuing.

LOCATIONS:
none.

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

CONTINUATION

PHYSICAL DESCRIPTIONS:

1. MONTES, Steven, WMA,
DOB-08/11/1973, 5'11" 175 lbs,
HAIR-BLK, EYE-BRO
DL-B8407812 CA
SSN-615346952
CII-UNK
SID-UNK
FBI-97219AB3
SMT-CSAR, HAND, RIGHT

(REMAINDER OF PAGE IS FULLY REDACTED)

Signature 11/05/05
Reporting Agent
SALAIZ, JAVIER

Signature 11/05/05
Special Agent Supervisor
AGUIRRE, ROBERT L

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

Investigation Title	Date	Number
OPERATION MICHO	10/24/2005	SD2005-00044

Report No.	Type	Case X-Ref.
SIX (6)	PROGRESS REPORT	

Case Agent	Reporting agent	Supervisor
SALAIZ, J.	COTERO, E.	AGUIRRE, R.

SUMMARY

On 10/12/2005, I, SA Emilio Cotero BNE/BIT drove by 824 S. Lolita Street, West Covina, CA, the residence of Steve MONTES. The residence is currently being investigated for drug trafficking activities,
The investigation continues.

DETAILS OF THE INVESTIGATION

On 10/12/2005, at approximately 0930 hours, I, Special Agent (SA) Emilio Cotero with the California Department of Justice (DOJ), Bureau of Narcotics Enforcement (BNE); Border Interdiction Team (BIT), drove by 824 S, Lolita Street, West Covina, California the residence of Steve MONTES. The residence is currently being investigated for drug trafficking activities. At the residence I saw a Chevrolet Tahoe with California License Plate number 5KLU297 (R/O: Steve Montes, 824

Lolita street West Covina, CA) parked on the street in front of the residence. Parked on the driveway of the residence, I saw a light blue Honda Accord with California License Plate Number 5MVJ015 (R/O: Maria Erica MONTES 824 Lolita Street west Covina, California).

At approximately 1030 hours, I arrived at LASCO Warehouse, located at 3255 Miraloma Avenue Anaheim, California, Steve MONTES possible employment. AT the business, I made contact with a female receptionist and inquired about their human resources. The receptionist provide me with a copy of a Contractors and Builders business card with an address of 2102 Business Center Drive Suite 115Q, Irvine, CA as their human Resources.

PHYSICAL DESCRIPTIONS:

2. MONTES, Steven, WMA,
DOB-08/11/1973, 5'11" 175 lbs,
HAIR-BLK, EYE-BRO
DL-B8407812 CA
SSN-615346952
CII-UNK
SID-UNK
FBI-97219AB3
SMT-CSAR, HAND, RIGHT

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

CONTINUATION

Investigation Title: OPERATION MICHO
Investigation No. SD2005-00044

VEHICLES:

1. 5KLU297 CA – 2004 Chevrolet, Tahoe
   Registered Owner-Steve MONTES,
   824 LOLITA ST., WEST COVINA, CA
2. 5MVJ015 CA-2003- Honda Accord
   Registered Owner-Maria Erica MONTES
   824 LOLITA ST., WEST COVINA, CA

LOCATIONS:

1. 824 LOLITA STREET, WEST COVINA, CA
2. 3255 Miraloma Avenue, Anaheim, CA.

TELEPHONES:

UNKNOWN

EVIDENCE:

NONE

Signature 10/24/05	*Signature 10/24/05*
Reporting Agent	Special Agent Supervisor
SALAIZ, JAVIER	AGUIRRE, ROBERT L

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATIVE REPORT

Investigation Title	Date	Number
OPERATION MICHO	10/20/2005	SD2005-00044

Report No.	Type	Case X-Ref.
7	SURVEILLANCE REPORT	

Case Agent	Reporting agent	Supervisor
SALAIZ, J.	WILDE, J.	AGUIRRE, R.

SUMMARY

On 10/20/05, Special Agents (SA's) from the California Department of Justice, Bureau of Narcotic Enforcement, San Diego Regional Office (DOJ/BNE/SDRO) attempted to locate and conduct surveillance on Enjobul KING (DOB 01/13/73) at his residence in Hemet, CA. No State funds were expended. This investigation is continuing.

DETAILS OF THE INVESTIGATION

On 10/19/05, I, Special Agent John Wilde from the California Department of Justice, Bureau of Narcotic Enforcement, San Diego Regional Office (DOJ/BNE/SDRO) planned to conduct surveillance on Enjobul KING, a suspected narcotics trafficker in the Montes Drug Trafficking Organization (MDTO). Based on DMV records, KING's last known residence was 140

E. Stetson Avenue, Apartment 195, Hemet, CA 92543 as of 06/23/05. The DMV record was the most current address information available. I prepared on Operations Plan for the surveillance and planned to meet Special Agent Supervisor (SAS) Robert Aguirre and Special Agents (SA's) Javier Salaiz and Emilio Cotero in Hemet on 10/20/2005 at 0800 hours. The plan was to begin surveillance of KING at his last known address of 140 E. Stetson Avenue, Apartment 195, Hemet, CA.

On 10/20/05, at approximately 0800 hours, SA Cotero was the first to arrive at 140 E. Stetson Ave. SA Cotero called me and told me the address was a UPS store, with P.O. Boxes located inside. A short time later I arrived and confirmed the address was a UPS Store. A short time after that, SAS Aguirre and SA Salaiz arrived. SA Cotero and I went to Hemet Police Department to see if KING had any local contacts while SAS Aguirre and SA Salaiz went to check KING's second most recent address at 12625 Fredrick St., Moreno Valley.

I spoke to the civilian desk officer at Hemet PD and provided her with KING's name and date of birth. She checked her computer and stated that KING had recently received a citation. I was provided a copy of Hemet PD Citation # 063105. The citation was issued to KING 04/25/05 for expired registration on a green 2001 Toyota Camry (CA LIC 4PGX818 R/O: Enjobul KING

12625 Frederick St., Moreno Valley, CA). The citation listed 140 E. Stetson Ave., Apt 195 Hemet, CA as KING's address.

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

CONTINUATION

Investigation Title: OPERATION MICHO
Investigation No. SD2005-00044

I went back to the UPS Store at 140 E. Stetson Ave and saw that there was a P.O. Box number 195. I contacted the clerk and identified myself as a Special Agent. I asked about the box holder for P.O. Box #195. The clerk stated that KING had moved from box #195 to box #256. KING had paid up through 11/30/05 for box #256. The clerk gave me a copy of the subscriber information the KING provided when he signed up for the P.O. Box. KING gave a home address of 201 S. Yale St. #59, Hemet and a home telephone number of (951) 442-6297. I advised SAS Aguirre of the findings and that SA Cotero and I were going to check 201 S. Yale St. #59. SAS Aguirre told me that the address at 12625 Frederick St., Moreno Valley was also a UPS Store and that he and SA Salaiz would meet us at 201 S. Yale St.

SA Cotero and I went to 201 S. Yale Street. 201 S. Yale St. was a building in the Whispering Pines apartments. SA Cotero and I got out on foot and walked into the complex to locate apartment #59. SA Cotero and I checked the area for two vehicles registered to KING but did not see them.

SA Cotero, Salaiz, and I went back to Hemet PD and spoke to the Crime Suppression Unit (CSU) officer that specializes in gang and narcotics enforcement for Hemet

PD. None of the officers knew KING. Cal-Gang was checked and KING was not listed in the database.

SA Salaiz, and I went back to the Whispering Pines apartments and spoke to the Manager, Jo Bate. Bate was very cooperative and told us KING lived in apartment #39, not #59. She also said KING had been evicted on 06/03/04 for non-payment of rent. KING left no forwarding address. I asked Bate if she remembered how KING paid his rent and she told me that KING used money orders to pay his rent.

All leads had been checked with negative results and the operation was terminated. No State funds were expended.

This investigation is continuing.

PHYSICAL DESCRIPTIONS:

6. KING, Enjobul, BMA,
DOB-01/13/1973, 5'11" 180 lbs,
HAIR-BLK, EYE-BRO
DL-B3715600 CA
SSN-559413266
CII-A10221523
SID-UNK
FBI-171308TA8
SMT-NONE

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

CONTINUATION

Investigation Title: OPERATION MICHO
Investigation No. SD2005-00044

VEHICLES:

1. 4PGX818 CA-2001 TOYOTA CAMRY
   HARD TOP, 4 DOOR
   Color-GREEN
   VIN-4T1BG22KX1U779296
   Registered Owner-KING, Enjobul
   12625 FREDERICK ST., MORENO VALLEY, CA
   Legal Owner-NONE
2. 5DFP523 CA- 1999 NISSAN, QUEST
   HATCHBACK, 4 DOOR
   VIN-1N4DL01DXXC186817
   Registered Owner-KING, Enjobul Kareem
   140 E STETSON AVE., HEMET, CA 92543
   Legal Owner-NONE

LOCATIONS:
NONE

TELEPHONES:
UNKNOWN

EVIDENCE:
NONE

Signature 10/24/05	*Signature 10/24/05*
Reporting Agent	Special Agent Supervisor
SALAIZ, JAVIER	AGUIRRE, ROBERT L

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

Investigation Title	Date	Number
MONTES	REDACTED	SD2005-00044

Report No.	Type	Case X-Ref.
23	PROGRESS REPORT	

Case Agent	Reporting agent	Supervisor
SALAIZ, J.	SALAIZ, J.	AGUIRRE, R.

DETAILS OF THE INVESTIGATION

(FULLY REDACTED)

PHYSICAL DESCRIPTIONS:

1. MONTES, Steven, WMA,
DOB-08/11/1973, 5'11" 175 lbs,
HAIR-BLK, EYE-BRO
DL-B8407812 CA
SSN-615346952
CII-UNK
SID-UNK
FBI-97219AB3
SMT-SCAR, HAND, RIGHT

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

BUREAU OF NARCOTICS ENFORCEMENT

INVESTIGATION REPORT

CONTINUATION

Investigation Title: MONTES
Investigation No. SD2005-00044

VEHICLES:

1. 5KLU297 CA – 2004 CHEVROLET, TAHOE
   Color-BLUE, DARK
   Registered Owner-MONTES, Steve,
   824 LOLITA ST., WEST COVINA

LOCATIONS:

1. 824 LOLITA STREET, WEST COVINA,
   LOS ANGELES COUNTY, CA 91791-0000.
   TYPE-RESIDENCE
   ADDRESS OF RECORD-MONTES, Steven

TELEPHONES:

UNKNOWN

EVIDENCE:

NONE

Signature DATE REDACTED
Reporting Agent
SALAIZ, JAVIER

Signature DATE REDACTED
Special Agent Supervisor
AGUIRRE, ROBERT L